

PLEADINGS, JUDGMENTS AND CHARGE

246

BY
M. L. SINGHAL, P. C. S. (J)

ALLAHABAD LAW AGENCY
LAW PUBLISHERS
9, UNIVERSITY ROAD, ALLAHABAD—2

347.072 SL 64 PJ

CONTENTS

| Chapter | PART I—PLEADINGS | Page |
|---------|--|------|
| I | Pleadings in General ... | 1 |
| II | Particulars ... | 13 |
| III | Alternative and Inconsistent Pleadings ... | 17 |
| IV | Revision and amendment of Pleadings ... | 20 |
| V | Parties to Suits ... | 31 |
| VI | Frame of Suit ... | 41 |
| VII | Plaint ... | 48 |
| VIII | Written Statement ... | 65 |
| IX | Miscellaneous Applications ... | 80 |
| X | Affidavits ... | 82 |
| XI | Model Pleadings ... | 85 |

PART II—JUDGMENTS

| | | |
|------|--|-----|
| I | Judgments in General ... | 154 |
| II | Judgments of Trial Courts in Civil Cases ... | 158 |
| III | Issues ... | 165 |
| IV | Grant of relief in Civil Cases ... | 169 |
| V | Judgments in Miscellaneous cases ... | 174 |
| VI | Judgments in Criminal Cases ... | 177 |
| VII | Discussion of Evidence ... | 184 |
| VIII | Judgments in Appeal ... | 190 |
| IX | Model Judgments ... | 194 |

PART III—CHARGE

| | | |
|-----|------------------------|-----|
| I | Charge in General ... | 211 |
| II | Joinder of Charges ... | 222 |
| III | Frame of Charge ... | 232 |
| IV | Table ... | 238 |

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374

Pleadings, Judgments and Charge

CHAPTER I

PLEADINGS IN GENERAL

“It is most necessary that litigants should come to trial with all issues *clearly defined* and that cases should not be expanded or grounds shifted without reference to the true facts”.

Pleadings are the backbone of a litigation nay, of the whole judicial system. Pleadings are the statements of the parties in writing, setting out their contentions and claims or counter-claims, giving details, so that the opposite party may know what case he has to meet or what is the reply to his case. According to Sir P. C. Mogha, “Pleadings are statements, written, drawn up, and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer.”¹ The two well-recognised forms of pleadings in a suit in India are :—

1. **Plaint** in which the plaintiff gives his cause of action and other necessary particulars.

2. **Written Statement** also known as defence statement wherein the defendant responds to the every material fact alleged by the plaintiff in the plaint and also sets out all such new facts as speak in his favour with such legal objections as he intends to take to the plaintiff's claim.

No wonder if pleading is succinctly defined in the Civil Procedure Code as meaning a plaint or written statement.²

No pleading subsequent to the written statement of a defendant other than by way of defence to a claim for set-off, can be presented except with the leave of the Court.³ Such subsequent pleading is known, when presented by the plaintiff a written statement, and when presented by the defendant an additional written statement.

Oral Pleadings.—The Code of Civil Procedure provides that when the facts alleged in the plaint or written statement (which may be called written pleadings) if any, of the opposite party are not expressly or by implication, admitted or denied

1. The Law of Pleadings in India, Tenth Ed. 1961, P. 1.

2. O. 6, R. 1, C. P. C.

3. O. 8, R. 9, C. P. C.

by the party against whom they are made, the court *shall* at the first hearing of the suit (and before the settlement of issues) ascertain from the latter whether he admits or denies them and record such admissions or denials.¹ Such admissions or denials made by the parties before the court may be called *oral pleadings*. Such admissions or denials become necessary when the defendant has not filed a written statement (a defendant under the Code is not bound to file written statement unless ordered by the Court) and also when the defendant alleges some new facts in his written statement, on which issues cannot be framed unless it is ascertained whether the plaintiff admits or denies them. These statements amount to supplementary pleadings and no plea inconsistent with them can be raised at a later stage except by way of amendment of pleadings.² Issues can be framed on such oral pleadings.

Object of Pleadings.—The whole object of pleading is to give fair notice to each party of what the opponent's case is.³ Pleadings crystallise the points on which the parties to the suit are at issue. The parties come to know what are the matters in dispute and what facts they have to prove at the trial. Lord Halsbury once observed, "Whatever system of pleading may exist, the sole object of it is that each side may be fully alive to the questions that are about to be argued in order that they may have an opportunity of bringing forward such evidence as may be appropriate to the issue." By knowing beforehand what points the opposite party will raise at the trial the parties become prepared to meet them and are not taken by surprise as they would have been, had there been no rules of pleadings to compel the parties to lay bare their cases before the opposite party before the commencement of the actual trial.⁴

Construction of Pleadings.—(1) A liberal construction should invariably be put on pleadings; and the intention of the party pleading should be ascertained. The court should look to the substance rather than to the wording of a pleading.⁵ A plaintiff's case should not be defeated merely on the ground of some technical defect in his pleading provided he succeeds on the real issues in the case.⁶ As such an erroneous description of the claim is not fatal if a claim for money had and received is described as one for damages, the error is not fatal.⁷

1. O. 10, R. 1, C. P. C.

2. *Mohamed Yahya v. Rahman Ali*, 117, I. C. 813; 1929 (Lah.) 165.

3. *Balli Ram v. Governor General* (1946) Cal. 294.

4. *Syed Mohammad v. Fatteh*, 22 C. 324 (P. C.); *Thorp v. Holdsworth*, 3 C. D. 637, 639.

5. *Ram Swarup v. Ram Chandra*, 1949 East Punjab 29.

6. *Dharam Das v. Ranchhodji*, 64 I. C. 517, 23, Bom., L. R. 1009.

7. *Herpal v. Ram Sarup*, 34, I. C. 720, 13 A. L. J. 160.

(2) An averment of the performance or occurrence, of all conditions precedent, necessary for the case of the plaintiff or defendant, should be implied in the pleading.¹

(3) A bare denial of an alleged contract by the opposite party shall amount to a denial of a fact of the express contract alleged or of the matters of fact from which the same may be implied. But, however, it will not amount to a denial of the legality or sufficiency in law, of such contract.²

(4) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, should be taken to be admitted except as against a person under disability.

Fundamental Rules of Pleadings.—The fundamental rules of pleadings incorporated in Order 6, of C. P. C. are :

- (1) that a pleading must state facts and not law ;
- (2) that a pleading must state all material facts and material facts only ;
- (3) that a pleading must state only the facts on which the party pleading relies and not the evidence by which they are to be proved ; and
- (4) that a pleading must state such facts concisely, but with precision and certainty.

FACTS, NOT LAW

A pleading must state only *facts* and not *law*.³ Neither provisions of law, nor conclusions of law nor 'conclusions of mixed law and fact' should be pleaded in a pleading. The reason is that it is for the *court itself* to find out and examine all pleas of law that may apply to the facts.⁴ A Judge is bound to apply the correct law and draw correct legal inferences from facts even if the party has made a wrong statement about the law applicable to those facts. It would be a mistake to presume that a Judge is not bound to consider any view of law in respect of the facts before him except as is laid before him formally by the parties.⁵ The parties should not plead merely that a right or liability exists or that an act was unlawful or wrongful or that the defendant is guilty of negligence or that the plaintiff is entitled as the heir-at-law to certain properties or that there was *donatio mortis causa*

1. O. 6, R. 6, C. P. C.

2. O. 6, R. 8, C. P. C.

3. (46) A. I. R. 1946 Nag. 114 (117) : I. L. R. (1946) Nag. 210.

4. (52) A. I. R. 1952 S. C. (47) (51).

5. *Gaura v. Sri Ram*, 1926 (Nag.) 265; *Somnath Singh v. Ambika Pd. Dubey*, 1950 All. 121.

or that the notice under section 80, C. P. C. was illegal. The facts which establish these pleas must be given in the pleading. This rule is nowhere enshrined in the Code of Civil Procedure but inference can be drawn to that effect from the provisions of R. 2, Order 2, which lays down that a pleading shall contain *only a statement of material facts*.

General practice is to plead that defendant was bound to render accounts to the plaintiff. This is nothing but an inference of law and should not be pleaded. Facts which render the defendant an accounting party should be clearly stated *e.g.*, that the defendant was the agent of the plaintiff for purchase and sale of cloth. It is equally bad to assert that the plaintiff is entitled to a right of way over the defendant's land; he should state how he is entitled to the right, whether by grant, prescription, or an easement of necessity, or otherwise. Besides, he should also set out the facts upon which he relies as entitling him to the particular kind of easement.¹ He must, for instance allege that the defendant had in consideration of Rs. 2000, granted to him, by a deed, dated March 10, 1956 a right to pass over the land, or that the plaintiff has been passing over the land in going from his house to the public road for more than 20 years before the institution of the suit as of a right and without interruption.

Examples of bad pleadings.—(i) That the plaintiff is a reversioner and as such is not legally bound by the transfer made by the Hindu widow in favour of the defendant. (A proposition of law has been alleged).

(ii) That the mortgage was made for the *legal necessity* and as such *is binding* on the son of the mortgagor. (The necessity should have been mentioned, secondly, sentence is nothing but an inference of law).

(iii) That the mortgaged property belongs to a Joint Hindu Family and as such the second defendant cannot transfer the property to the first defendant without the plaintiff's consent (A proposition of law has been alleged).

(iv) That the contract in suit is void and as such is not enforceable (Facts rendering the contract void should be specified).

(v) that for the above said reasons the suit is liable to be dismissed. (Nothing but an inference of law. It is for the court to decide whether the suit should be sustained or dismissed).

Foreign law and custom.—The rule that every-pleading should contain facts and not law is limited to that law only of which the court is bound to take judicial notice. The courts are not bound to take judicial notice of foreign law, or of particular

1. *Farrell v. Coogan*, 12 L. R. I. R. 14.

customs or usages of trade, they should be pleaded like any other fact, if a party wants to rely on them.¹ If for instance an occupancy tenant in Uttar Pradesh is entitled by local custom to cut the trees growing on his holding, he must plead the custom if he wishes to assert his right to cut the trees, and if a party relies on a usage at variance with the Contract Act he should plead the usage with particulars about its incidents and details.² If it is not pleaded no evidence to prove it will be admitted.³ A custom, however, which has acquired the force of law, need not be pleaded.

Legal Pleas.—The rule also does not apply to legal pleas to a suit, or pleas denying the legal right claimed by the opposite party. If a plaintiff claims as an heir on the ground of certain relationship the defendant may take a legal plea that the plaintiff is not the heir, even assuming the alleged relationship to be correct. In a suit by a landlord for the arrears of rent if a defendant denies the plaintiff's title, the plaintiff may plead an estoppel under section 116 Evidence Act, against the defendant's plea. Similarly, pleas in bar of suit, *e.g.*, of limitation, *res-judicata*, etc, may be raised. Such pleas are "objections in point of law" and raise what are called "issues of law".⁴

MATERIAL FACTS

The second fundamental principle of pleading is that *every pleading shall contain and contain only, a statement of the material facts on which the party pleading relies for his claim or defence*. In other words a party pleading must allege all *material facts* on which he intends to rely, and he must allege *material facts only* and no fact which is not material should be alleged. The material facts mean—

(a) all facts upon which the plaintiff's *cause of action* or the defendant's *defence* depends ; in other words, all those facts which must be proved in order to establish the existence of a cause of action or defence⁵; and

(b) all facts which, though not necessary to establish the cause of action or defence, but which the party pleading them is *entitled* to prove at the trial are also material facts.⁶ Thus, in a suit for damages for breach of a contract the cause of action consists in the making of the contract and in its breach. A fact which is necessary to fix the *quantum* of damages may be proved

1. *Vishwanath v. Ram Narain*, 1910 (All.) 405, 190 I. C. 109.

2. *Sital Prasad v. Ranjit Singh*, 1931 A. L. J. 390.

3. *Brahadeeswara v. Rajagopal*, 1947 Mad. 71.

4. A. P. C. Mogha : *Law of Pleadings in India*, Ninth Ed. P. 18.

5. (1954) A. I. R. 1954 Vindh Pra. 53 (55).

6. (1955) A. I. R. 1955 Bhopal 18 (19).

by the parties at the trial, though the cause of action or the defence does not depend upon it. Such a fact is, therefore, also a material fact and must be pleaded in the pleading.¹

What facts are material in a particular case depends on the circumstances of each case.

If a party *omits* to give a material fact he will not be allowed to give evidence on that fact at the trial unless the pleading is amended under Rule 17, O. 6, C. P. C.² But if a party alleges facts which are not material, then unless such statements are embarrassing or ambiguous, the courts will not as a rule, inquire very closely into the materiality thereof.³

Instances of Material Facts.—In a suit for injunction it is material to allege that the defendant “threatens and intends” to repeat the illegal act.⁴ When collusion is alleged between *x* and *y*, the fact that *x* knew the improper motives which actuated *y* is material.⁵ Where words of praise are spoken so ironically that they amount to defamation it is material to allege that they were so intended and understood. Where a suit is instituted under a particular Act it is material to allege all facts which are necessary to bring it under the Act.

Where the contents of a document are material it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof, unless any precise words are material.⁶

How far the *damages sustained* and *other facts affecting damages* are material and should be stated in a pleading? Damages are of two types : (1) General damages and (2) Special Damages. Law presumes *general damages* to be the natural consequences of the defendant’s act. They are not to be alleged. For instance the wrongs of Trespass, Libel and Slander being actionable *per se*, the law presumes general damages and allows without any proof. On the other hand *special damages* are not the natural and probable consequences of defendant’s act. They depend on the special circumstances of each case and the court does not allow special damages unless the circumstances resulting in special damages are expressly specified in the pleading. It must also be established that the loss was incurred and that it was the direct result of the defendant’s act.

1. (1880) 6 B. D. 191 (196) : 50 L. J. Q. B. 214, *Hillington v. Loing*.

2. A. I. R. 1955 Bhopal 18 (19).

3. (1888) 38 Ch. D. 263 (270-271) : 58 L. T. 259; *Knavels v. Roberts*.

4. *Stannard v. Vestry of St. Gile’s*, 20 Ch. D., P. 195, 46 L. T. 243.

5. *British Etc. v. Britannica etc.* 59 L. T. 888.

6. O. 6, R. 9, C. P. C.

Special damages must invariably be specified in the pleading like any other material fact. It is considered material because they are required to be proved and the decree cannot be passed unless they are proved or admitted. All those facts which establish that the plaintiff suffered special damages and that they were the direct consequences of the defendant's act must be expressly alleged in the pleading.

General damages are not to be alleged specifically nor is any evidence necessary to prove their amount. General words like "whereby the plaintiff has been injured in his credit and reputation" or "whereby the plaintiff has suffered damage" will serve the purpose. But as a matter of fact such words are also not necessary. The plaintiff may only specify facts and end with a prayer for damages.

Exceptions to the general rule.—The general rule of 'all material facts and material facts only' is qualified by the following two exceptions :

(i) The performance or occurrence of any condition precedent necessary for the case of any party need not be alleged as its averment shall be implied in his pleading. If the other party wishes to contest the performance or occurrence of such condition he must set up the plea distinctly in his pleading (O. 6, R. 6, C.P.C.). Such condition may be enshrined by the statute *e. g.*, notice of a suit against Central or State Government (Section 80, C. P. C.) or consent of the Advocate General for a suit about public nuisance (Section 91, C.P.C.) or public charitable trust (Section 92, C.P.C.). But where the plaintiff is aware that he has not performed the condition and has an excuse for such non-performance, he may in the plaint, specify the condition, the non-performance thereof and the facts which favour his excuse *e. g.* the defendant obstructed him from performing it.

(ii) Neither party need, in any pleading, allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies on other side, unless the same has first been specifically denied. (O. 6, R. 13, C. P. C.). For example in a suit on a promissory-note it is not incumbent upon the plaintiff to allege consideration as section 118 of the Negotiable Instruments Act recites a presumption in his favour. It is, however, pertinent to note that the exception applies only to those presumptions which a court is bound to make. To be more practical, only those facts need not be alleged which a court "shall presume" within the meaning of the Indian Evidence Act; but the facts which a court "may presume" ought to be alleged.

FACTS NOT EVIDENCE

The next fundamental rule of pleading is that every pleading shall contain a statement of material facts but not the evidence by which they are proved.¹

There are two kinds of facts.

(1) *Facta probanda* (facts to be proved).

(2) *Facta probantia* (the evidence of facts by means of which they are to be proved).

Facta probanda are the facts on which a party relies and they should be stated in a pleading. On the other hand the *Facta probantia* are the evidence of facts by which they are to be proved. They are not facts in issue but relevant to the facts in issue. They should not be stated in a pleading.

One of the terms of a policy of life insurance was that it would become void if the policy-holder "died by his own hand". In an action on the policy the defendant Insurance Company wanted to defend the claim on that ground. It was asserted in defence that the policy-holder had, for weeks, been in a moody miserable state, that he had bought a pistol the day before his death, and that on him was found a letter to his wife stating that he intended to kill himself. It was held that all these facts were merely evidentiary facts and should not be pleaded in the pleading and that it was sufficient to allege in the pleading that the assured died by his own hand.² Previous admissions of the opposite party are also nothing but *Facta probantia* and they should not be alleged in a pleading. The rule has been incorporated in the Indian Code of Civil Procedure. Reference may be made of the following provisions :

(1) Whenever it is material to allege notice, fraudulent intention, knowledge or other condition of mind of any person, it shall be sufficient to allege the same as a fact, without setting out the circumstances from which the same is to be inferred, for the circumstances would be no more than evidence of facts.³ In a suit against a defendant on whose representation of X's solvency the plaintiff gave goods on credit to X, the plaintiff should only specify that the said representation was false, and was then known by the defendant to be so, and was made by him with intent to deceive and defraud the plaintiff.⁴ The plaintiff need not plead facts or circumstances from which the plaintiff had drawn this inference.

1. O. 6, R. 2, C. P. C.

2. *Broradale v. Hunter*, 5, Mau. and Gr. 639.

3. O. 6, R. 10, C. P. C.

4. C. P. C. Appendix A. Pleading no. 22.

However the particulars of fraud should be given. It will not be sufficient to say that the defendant committed a fraud.¹ Nature of the fraud and how it was committed must be given, but not the evidence by which it is to be proved.

(2) Whenever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact, unless the form or precise terms of such notice, or the circumstances from which such notice is to be inferred, are material.² Cases are not rare where notice has to be alleged as a material fact *e. g.* in a suit where priority for subsequent transfer is claimed or where a prior mortgagee claims to tack a subsequent advance in pursuance of a contract in the mortgage-deed or in a suit to recover trust property from a person to whom a trustee has given it in breach of the trust. In such cases the plaintiff should only plead that the defendant had notice of the plaintiff's contract or of trust etc. The circumstances from which the conclusion as to notice is to be drawn need not be alleged.

In some cases the form or precise terms of the notice are material and in those cases, they should be narrated. For instance when the plaintiff claims to have terminated the tenancy by a 15 days' notice, the pleading should be worded like this: "On March 13, 1963, the plaintiff served upon the defendant a written notice calling him to vacate the house and deliver up possession to him on the expiry of March 31, 1963".

(3) Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations or circumstances without setting them out in detail. And if in such a case, the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.³ For instance a contract of tenancy may be implied from the acceptance of rent. Similarly a contract of indemnity may be inferred where a person performs under law an obligation for which another person is liable. In all these cases the conduct or circumstances should be pleaded in the pleading with an averment of the contract to be implied. But a sufficient account of the conduct or circumstances should be given to identify them.

CONCISENESS, PRECISION AND CERTAINTY

The fourth and the last fundamental rule of pleading is that every pleading shall contain and contain only, a statement

1. O. 6, R. 4, C. P. C.

2. O. 6, R. 11, C. P. C.

3. O. 6, R. 12, C. P. C.

in a concise form of the material facts¹, though with precision and certainty. Every pleading should be worded concisely, but at the same time precision should not be sacrificed. A pleading should be both concise and precise. Conciseness can be accomplished (i) by omitting unnecessary facts (ii) by omitting unnecessary details while narrating material facts and (iii) by paying due attention to the language used in the pleading. Precision can be achieved by pursuing the following instructions :—

(a) Names of persons and places should be accurately written and spelt.

(b) Use of pronouns such as “he” or “she”, “this” or “that” should be avoided unless they unmistakably refer, to the person or thing.

(c) Parties should not be referred to by names only. Their names should be accompanied by the expression “the plaintiff”, “the defendant”, “the plaintiff no. 1,” or “defendant no. 1” as the case may be.

(d) Things should be addressed by their correct names and the name adopted at one place should be adhered to throughout. It is not good to call a property at one place “land with trees,” “grove” at another and “trees with land under them” at a third place.

(e) In an action on the basis of an Act, the language of the document or the Act should be used. For example if the terms of a policy provide that the policy is to become void “if the assured shall die by his own hand”, “the assured died by his own hand” should be pleaded and not that “the assured killed himself” or that “he committed suicide”.

(f) Avoid the use of ‘its’ and ‘buts’ as far as possible.

(g) All necessary particulars should be pleaded in the pleading.

(h) Pleading should be divided into separate paragraphs and one paragraph should contain one fact only.

(i) Repetition should be avoided.

Signature To Pleading.—Every pleading must be signed by the party and his pleader.² The object of this rule is to prevent disputes as to whether the suit was instituted with, or without, the plaintiff’s knowledge and authority.³ Where the number of plaintiffs exceeds more than one the plaint should be signed by every one though the law does not say that a person cannot be

1. O. 6, R. 2, C. P. C.

2. O. 6, R. 14, C. P. C.

3. *Basdeo v. Smidt*, 22 A. 55 (61).

treated as plaintiff until he has signed the plaint.¹ Where a person is unable to sign, his thumb mark will be a valid signature.² Where a person can write his name his initials would be sufficient. It is pertinent to note that a pleading should be in existence when it is signed, and therefore, signing a blank sheet of paper before the pleading is drawn up is not sufficient and the pleading written out subsequently upon such sheet of paper would be defective.³

The rule that every pleading should be signed by the party concerned is subject to the proviso that where the party is, by reason of absence or for other good cause, unable to sign the pleading it may be signed by any person duly authorised by him to sign the same or to sue or defend on his behalf.⁴ Mere absence is not sufficient for the application of the proviso; the absence should be of such a kind as renders the signature impossible. As to "other good cause" it has been held that the court should be satisfied by affidavit or otherwise that there is sufficient ground for dispensing with the signature of the party. In such cases an application should be moved and the court should pass a formal order thereon, though the notice of such application is not necessary to be served on the other party.⁵ It is not necessary that the person authorised should have been authorised in specific terms to sign the pleading. A general authority to sue or defend on behalf of the party is sufficient.⁶ Further the way in which the authority has been obtained is also immaterial.

Verification to Pleading.—The next requirement of a pleading is that it should be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.⁷ This calls for distinction between the requirements of signature and verification to a pleading. Signature to a pleading may be made by the party or his authorised agent but a verification, besides by a party or his authorised agent may also be made by any other person acquainted with the facts of the case. The laxity in the latter case is due to the fact that, while signatures are necessary to show that the pleading has been filed with the knowledge and approval of the party, the object of verification is only to fix the responsibility of the statements made therein

1. O. 6, 14, C. P. C.

2. *Mohani v. Bunosi*, 17 C. 530.

3. *Girdhari v. Kanhaya*, 15 A. 59.

4. O. 6, R. 14, C. P. C.

5. *Pudlomonee v. Sham Charan* 1, Ind, Jur. N. S. 226.

6. *Kastalino v. Rustamji*, 4 B, 468.

7. O. 6, R. 15(1), C. P. C.

upon some one¹, before the court proceeds to adjudicate upon them. Where verification is made by a person other than a party to the pleading, unlike signature no formal application is required to be moved to the court nor the court should pass orders thereon. All that is required is that the party verifying should satisfy the court by affidavit or otherwise that he is acquainted with the facts of the case.

It is not at all necessary that the verification should be made in the presence of the court. However, the Bombay High Court has held that it is desirable that verification by persons other than parties should be made before the court, unless there are sufficient reasons for dispensing with the attendance of the party verifying.²

In suits by a against a corporation, the pleading may be signed and verified on behalf of the corporation by the secretary or by any director or other principal officer of the corporation who is able to depose to the facts of the case.³

The verification should be made on the lines that the person verifying shall specify at the foot of the pleading by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge, and what he verifies upon information received and believed to be true. The verification shall be signed by the person making it and shall state the date on which and the place at which, it was signed.⁴

Defects of Signature or Verification.—A defect in signature or verification will not render the pleading void and a suit cannot be dismissed nor can a defence be struck out simply for want of, or a defect in, the signature or verification of the plaint or written statement.⁵ A suit cannot or ought not fail because of imperfect verification.⁶ The defect may be cured by amendment, at any stage of the suits⁷ and when it is cured by amendment, the plaint must be taken to have been presented on the date in which it was originally presented and not on the date on which it was amended.⁸ The defect can be removed in appellate stage also.

1. *Basdeo v. Smilt*, 22 A, 55.

2. *Kastolino v. Rustamji*, 4 B. 468.

3. O. 29 R. 1, C. P. C.

4. O. 6, R. 15, (2), (3). C. P. C.

5. *Mt. Sobhag Kunwar v. Jugrai*. 1949 Ajmer 37.

6. A. I. R. 1959 Cal. 642.

7. *Subbiah v. Sankarapandious*, 1948, Mad. 149.

8. *Ramgopal v. Dharendra*, 101, I. C. 573.

CHAPTER II

PARTICULARS

Order 6, Rule 4, C. P. C. provides that in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms in Appendix A *particulars* (with dates and items if necessary) shall be stated in the pleading. Particulars in reference to pleadings may be defined as details of any matter stated in any pleading or details of the case instituted.

There is no definite rule as to degree of particulars to be given in a pleading, but as much certainty and particularity should be insisted upon as is reasonable and a party is entitled to a fair outline of the case of his opponent and to have any and every particular that will enable him to know his opponent's case and to prepare himself accordingly,¹ though he is not entitled to a disclosure of evidence of his opponent.² It is, however, no excuse for withholding particulars that the disclosure of particulars will also entail the disclosure of some portion of evidence.

It is pertinent to note that under 'particulars' only such facts as are the details of the facts stated in the pleading can be set out, and no new material altogether based on an entirely different cause of action can be introduced. This calls for distinction between the particulars of a 'material fact' and 'material fact itself'. "Material fact" is an essential element of the cause of action and if any material fact is omitted the plaint is bad and can be rejected under Order 6, Rule 11 (a) C. P. C. Particulars are the details of a material fact which it is necessary for the other party to know to prevent him from being taken by surprise and to narrow the issues and an omission to give such particulars does not entail rejection of the pleading but the court may make an order for submission of necessary particulars. But there are certain particulars without which an allegation of material fact does not amount to a good averment of that fact at all, e.g., an allegation of fraud, and the omission of such particulars will make the averment of the material fact bad and liable to be struck out altogether. These particulars are different from those required to narrow the issues or prevent surprise, absence of which does not entail rejection of the pleading but gives the other party a right to ask the court to order particulars.³

1. *Phillips v. Phillips*, 4 Q. B. D. 127 ; *Saunders v. Jones*, 7 Ch. D. 452.

2. *C. Reet v. Gangaraj*, 17 I. C. 214, 1937 (Cal.) 129.

3. P. C. Mogha : *The Law of Pleadings in India* (Ninth Ed.) P. 49.

Object of particulars.—The object of giving particulars in a pleading is :

(1) To narrow down issues, by limiting the inquiry at the trial to matters set out in them ; and

(2) To ensure clearness and to prevent the other party from being taken by surprise.

Where a party fails to supply the particulars ordered for the suit may be stayed or even dismissed if the plaintiff is at fault and the defence may be struck out if the defendant is at fault.

What particulars are necessary to be given.—Under the Code in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the Forms in Appendix A, particulars (with dates and items if necessary) shall be stated in pleading. The following are examples of some other cases in which it is indispensable to give particulars :

(i) **Suit for accounts.**—Particulars should be alleged as to how the defendant is an accounting party and how he has come to stand in that position. It will be insufficient to allege merely that the defendant is an accounting party.

(ii) **Adoption.**—The party pleading adoption should specify particulars as to the person who adopted, to whom the adoption was made, the person adopted and his relationship with the adopter and the person who gave in adoption. It will not be sufficient to plead merely that *X* is the adopted son of *B*.

(iii) **Adverse possession.**—Particulars should be given as to how and when the adverse possession commenced. For instance that the defendant has been in possession continuously for more than 12 years so openly that either the plaintiff was aware of his possession or ought to have been aware, had he exercised due diligence.¹

(iv) **Agreement.**—Particulars should be given as to dates, names of the parties and consideration of the agreement and whether the agreement was in writing or oral. In an action for breach of an agreement, the exact condition broken and the manner of breach should be clearly specified.²

(v) **Breach of Contract.**—Particulars as to the exact manner in which the contract was broken, must be given in the words of the contract itself. Where only one of the terms of the contract has been broken, the term broken should be specified.

1. *Sri Chandra v. Baij Nath*, 1935 O. W. N. 25, 1935 (P. C.) 36.

2. *Jamshed v. Kunji Lal*, 1938 N. L. J. 392, 1938 (Nag.) 530.

(vi) **Breach of duty.**—Particulars should be given as to facts which establish the duty. For instance if the duty arises out of a contract, the particulars of the contract ; if it arises out of a statute, the particulars of the statute should be given. The manner in which the duty has been broken should also be specified.

(vii) **Custom.**—Particulars of the custom with its incidents, particularly when it is at variance with the general law must be specified in clear terms.¹ It is also necessary to aver that the custom is reasonable, certain and immemorial and has been followed without interruption.

(viii) **Cruelty.**—Particulars of the act alleged to amount to cruelty should be specified. The date, time and place of the act should also be given.

(ix) **Easement.**—Particulars of the nature of the easement claimed, how it arose and also of the manner in which the easement alleged have been acquired *e. g.*, by grant, prescription or under the Act,² should be given. If the easement has been acquired by prescription, that the right has been exercised for at least 20 years ending within two years of the suit without interruption and as of right should be given. Where the easement is claimed against Government user for 60 years should be established.

(x) **Immorality.**—Where a son institutes suit to set aside an alienation made by his father, on the ground that the alienation has been for immoral or illegal purpose, particulars of those purposes should be given. To be more practical it should be stated specifically how the debt is connected with the immoral pursuits of the borrower.³ It is not sufficient to allege merely that the alienation has been for immoral or illegal purposes.

(xi) **Justification.**—Where a wrongful act is sought to be justified, particulars of justification should be given *e. g.*, that the act has been done with permission or in self-defence or due to pure accident or has been done under the orders of a third person (the name of the person should be mentioned and, it should also be given how he had authority to give such order).⁴

(xii) **Representation.**—It should be given whether the representation was oral or in writing and when and where it was made. If the representation was in writing, the writing should also be given.

1. *Sital Prasad v. Ranjit Singh*, 1931, A. L. J. 390, 1931 (All.) 583.

2. *Manmath v. Rakhal*, 1933, Cal. 215, 142 I. C. 458.

3. *Tulshi Ram v. Bishnath*, 105 I. C. 885.

4. *Henderson v. Williams*, 1 Q. S. 521.

(xiii) **Special damages.**—Where a party claims special damages, full details of the damages suffered should be given. Mere allegation of the amount suffered won't help. For example, in a suit for malicious prosecution it is not sufficient to claim Rs. 1000/- as "cost of defence" but details of expenses incurred in defence should be alleged.

(xiv) **Title to Property.**—Where a person avers himself to be the owner of certain property, 'he need not give any particulars of his title if he is in possession, but may simply allege his title, unless he admits the legal title of the other party and relies only on some equitable title in himself.' For example, a defendant in possession need not plead his own title but may plead that he is a *bona fide* transferee for value from an ostensible owner and may give particulars of that plea only.¹

Mistake in Particulars.—If the particulars given in a pleading are wrong, they can be corrected by the permission of the Court. If the particulars are not corrected and the mistake is such as is likely to mislead the other party, the party giving particulars must bear the consequences. But if the mistake is not likely to mislead the other party the mistake is of no consequence.²

Remedy of a party where other party fails to give particulars.—Where a party fails to furnish particulars or the particulars furnished by him are insufficient, the other party may move an application under O. 6, R. 5, C. P. C. for a further and better statement of particulars. Rule 5 stipulates as follows :

"A further and better statement of the nature of the claim or defence or further and better particulars of any matter stated in any pleading may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just".

1. *Milbank v. Milbank*, 1 Ch. 376.

2. *Nama Giri v. Muthu*, 111 I. C. 887 ; 1928 (Mad.) 940.

CHAPTER III

ALTERNATIVE AND INCONSISTENT PLEADINGS

Alternative Pleas.—Law permits a plaintiff to rely upon several different rights in the alternative and a defendant to plead as many defences as he likes.¹ For instance a pre-emptor may claim partial pre-emption pleading vendor's want of title to the portion not claimed and in the alternative pre-emption for the whole if the court found vendor's title to the whole.² Similarly an action for a declaration of proprietary title or in the alternative for pre-emption is maintainable.³ A plaintiff may sue for a possession of a house belonging to X either as the adopted son of X or under a will executed by X in his favour. He may claim proprietary right in a land or in the alternative a right of easement.⁴ Similarly in an action for pre-emption a defendant may set up the plea of estoppel and at the same time deny the custom of pre-emption.⁵ And so, a defendant in a suit on bond allege that he did not execute it and at the same time plead that the claim is barred by limitation.

It is however pertinent to note that the facts on which each alternative claim or defence is set up must be distinctly and separately stated.⁶ If they are not separately and distinctly stated 'the court will not permit an attempt to show that any particular ground can be covered by implication from certain allegations'. In a suit by a son to set aside certain alienations made by his mother, the plaintiff simply averred that his mother was at the time of making alienations of unsound mind, and added that the donee was living with the said mother who was completely under her control and the donee was well aware of the mental condition of the donor. The *Privy Council* ruled that on these allegations the plaintiff can be said to base his claim only on unsoundness of mind of the donor and a claim on the ground of undue influence cannot be entertained, because if he wanted to set up an alternative case of undue influence, he ought to have alleged that separately. The assertion that the donor was under the dominion

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1. *Firm Srinivas Ram Kumar v. Mahabir Prasad*, 1951 S. A. 177.
 2. *Afzal Hussain v. Huran Bibi*, 27 A. L. J. 589.
 3. *Bhagwati Saran v. Parmeshar Das*, 12 A. L. J. 798.
 4. *Amrita Nath v. Jogendra*, 1924 (Cal.) 369.
 5. *Dwarka v. Ram Ratan*, 128, I. C. 755.
 6. *Official Assignee v. Baidya*, 30 C. L. J. 428.

and control of the donee was considered to have been made only incidently in connection with the allegation of mental incapacity.¹

Inconsistent pleas.—In England formerly a party could not raise inconsistent pleas. But the passing of the Judicature Act has changed the position and now inconsistent claims and defences are frequently preferred so much so that denials of indebtedness and pleas of payment are often made. The only limitation is that inconsistency in the pleas of a party should not be such as to operate as a source of embarrassment to the other party.

In India the general principle is that there can be no objection to preferring alternative and inconsistent claims or raising inconsistent pleas provided they are based on the facts which are not inconsistent. Even inconsistent facts are not prohibited as a matter of law, but inconsistent claims or inconsistent pleas which are based on facts which are so inconsistent that the evidence required to prove one fact is destructive of the other fact, should be discouraged except when the facts are not within the personal knowledge of the party pleading them.²

Examples of permissible inconsistent pleas.—A plaintiff in an ejectment suit may allege that the defendant is his tenant or that he is a trespasser.³ A defendant in an ejectment suit may claim tenant's right or title by adverse possession.⁴ A mortgagor may allege that the mortgage money has been paid and may, in the alternative offer to pay in portion that may still be found to be due.⁵ The defendant may plead that she was never married to the plaintiff and may in the alternative allege that the marriage was null and void as it was without her consent. In an action for possession under a deed of *waqf*, the defendant pleaded that she did not execute the deed and that the plaintiffs, her relatives, cheated and gave her wrong information that in order to facilitate the management of her property, she should get a deed completed, suggesting thereby that the deed was obtained from her, without her being told that it was by fraud and undue influence. The defence of denial of execution and fraud were allowed as there was absence of inconsistency in the facts on which they were based.⁶ Where a plaintiff instituted a suit as reversioner of his material grandfather A, and the defendant claimed under a sale-deed from a daughter of A, the defendant was allowed to plead that the sale

1. *Ismail v. Hafiz Boo*, C. 733, 33 I. A. 86.

2. *P. C. Mogha* : The Law of Pleadings in India (Ninth Ed.) P. 73.

3. *Laxmibai v. Hari*, 9 Bom. H. C. R. 1.

4. *Chhaukuddin v. Ram Narain*, (1926) Cal. 364.

5. *Butchanna v. Vernahalu*, 24 M. 408.

6. *Farid-un-nisa v. Mukhtar*, 40 I. C. 488, O. L. J. 230.

by the daughter was justified by legal necessity, and, in the alternative, that A had left a son on whose death the property passed to A's widow, as mother, and, on her death, the plaintiff became entitled to the property and he lost that right by adverse possession of A's daughter. The reason given was that the two pleas advanced by the defendant were inconsistent, yet the inconsistency would cause no embarrassment and the evidence of the two pleas was by no means conflicting.¹ In a suit, by an adopted son, the defendant who claimed under a deed of gift from the widow of the adoptive father was allowed to deny the adoption, and at the same time to plead that, even if the adoption was made, it was conditional on the provision of the will in favour of the widow being acquiesced by the plaintiff's natural father because the defendant was no party to the will or the alleged adoption.²

But a plea of payment should not be simultaneously raised with a plea that the defendant never borrowed the money. It is also not advisable to a defendant to plead the denial of the contract and in the alternative that the contract was a wager. But if he is the representative of the original party he may raise both these pleas provided he is not aware of the transaction. For instance when the sons were sued for the money misappropriated by their father they were allowed to plead in the alternative that there was no misappropriation and that the father having acted dishonestly and his acts amounting to a criminal offence, the sons are not liable under the Hindu Law.³

It is always advisable that inconsistent pleas should not be raised for a Judge is likely to come to the conclusion that a person who has to rely on inconsistent statements has a case of very little merit. A party should rather decide on one line of defence without introducing matters which will give rise to suspicion. Where however, a party is from obscurity or from complexity of facts, in honest doubt as to the relief available to him, inconsistent claims may be entertained.⁴

1. *Sri Rang v. Rantheyya*, 13 I. C. 128, 13 C. L. J. 439.

2. *Narayan Swami v. Rama Swami*, 14 M. 172.

3. *Toshanpal v. The District Judge of Agra*, 51 A. 386. P. 391.

4. *Sir P. C. Mogha : The Law of Pleadings in India* (Ninth Ed.). P. 76.

CHAPTER IV

REVISION AND AMENDMENT OF PLEADINGS

When a party's pleading is defective or incomplete, the opposite party may have recourse to the following remedies :

- (1) he may apply for further and better particulars¹; or
- (2) he may apply for having the objectionable portion of the pleading struck out or amended²; or
- (3) when the plaint is so defective as to disclose no cause of action, he may apply for having the same rejected.³

The court may at its own instance also pass orders for the purposes specified above. The court has also power to order such amendments as are necessary for the purpose of determining the real questions in controversy between the parties.⁴ Under section 151 of C. P. C. in exercise of its inherent power also, the court may order such amendments as may be necessary for the ends of justice or to prevent abuse of the process of the court.

Amendments ordered by the court on the application of a party or *suo motu* (at its own instance) are known as *compulsory amendments*.

When a party's pleading is defective or incomplete, he may himself revise it in the following ways :

- (1) he may file further particulars with the leave of the court ; or
- (2) he may file a written statement, if a plaintiff, or an additional written statement, if a defendant, with the leave of the court⁵ ; or
- (3) he may amend the pleading with the leave of the court.⁶

Such revision is known as *optional amendment*.

REVISION OF OPPONENT'S PLEADING

Further particular:—When a party omits to furnish in his pleading any particulars which he ought to have given according to R. 4, O. 6, C. P. C., the other party may apply for further and

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1. O. 6, R. 5, C. P. C.
 2. O. 6, R. 16, C. P. C.
 3. O. 7, R. 11, C. P. C.
 4. O. 6, R. 17, C. P. C.
 5. O. 8, R. 9, C. P. C.
 6. O. 6, R. 17, C. P. C.

better particulars of any matter stated in the pleading. Furnishing particulars of what has been worded vaguely is not a discretionary matter at all. It is ordering one of the parties to give the other his dues.¹ The court must see that parties plead their case so plainly, fully and clearly that either side knows the nature of the case which he has to meet.² If the pleadings are not definite the court will have difficulty in excluding much irrelevant evidence and consequently much public time may be wasted.³ The proper course in such cases would be, not to take care of the file, but to order particulars to be given or to direct amendment of the plaint.⁴

When to apply.—The application for further particulars should be moved within a reasonable time after the necessity arises, otherwise, if there is undue delay, the application may be refused.⁵ But a defendant does not waive his right to apply for particulars by delivering a defence. There will, however, be no necessity for amendment by giving particulars when the court has already come to a definite finding on a point.

Discovery before particulars.—Can discovery be ordered before particulars are filed? The answer to this question depends on the circumstances of each case when the party pleading is unable to give the particulars without first obtaining particulars from his opponent, discovery may be ordered before particulars or where it is necessary for him to inspect the opponent's account books he may be allowed to do so.⁶ In a suit by a principal against his agent, employed to purchase grain, the principal alleged that the agent had paid higher prices and had secretly received commission from the vendors. The agent insisted on particulars. Held that the principal was entitled to inspection of the agent's books before he could be called upon to give particulars.⁷ But in a libel case where the defence was of justification and the defendant had prayed inspection of the plaintiff's account books, the court ordered him to give particulars before he was entitled to discovery and inspection of plaintiff's account books. Kay, L. J., observed :

“To apply the practice to the case of a libel would be to sanction the publication of a libel, when the libellor knew no

1. ('15) A. I. R. 1915 Mad. 934 (986-983) (D. B.)

2. ('41) A. I. R. 1941 Oudh. 457 (464).

3. ('42) All. 624 (D. B.).

4. ('31) A. I. R. 1931 Cal. 569 (661).

5. ('54) Madh. B. L. J. 1954 H. C. R. 1698 (1699).

6. *Rama Krishniiah v. Satyanandan*, 55. M. 704, 62 M. L. J. 226.

7. *Whyte v. Ahreng*, 26 Ch. D. 717.

facts justifying the libellous statement, because he believed he could by the process of discovery, elicit such facts.¹

Order for particulars, when refused ? An order for particulars, however, cannot be made in the following cases :

(1) Where it would be cumbersome or unreasonable, as, where the information requested for is not in the possession of the either party or could not be obtained without involving great difficulty.

(2) Where the allegation is in the negative. For instance, in a suit for malicious prosecution when the plaintiff alleged want of reasonable and probable cause and the defendant merely denied the allegation, the defendant was not ordered to give particulars of his reasonable and probable cause.²

(3) Particulars cannot be exacted of an immaterial allegation.

(4) Particulars cannot be given which are merely evidence of material facts.

(5) When the plaintiff sues for account to be taken of the money due to him, no particulars can be ordered from him.³

Amendment of further particulars.—A party having delivered particulars in an action cannot withdraw, add to, or amend, them without leave of court.⁴ As a rule, however, leave will be granted when the amendment will cause no injury to the other party, but the applicant will be ordered to pay the cost of his opponent in any event.⁵

STRIKING OUT OR AMENDING OPPONENT'S PLEADINGS

Order 6, Rule 17, C. P. C. stipulates that "the court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit." Every party is entitled, *ex debito jussit*, to have the case against him presented in an intelligible form, so that he may not be embarrassed in meeting it.⁶ O. 6, R. 17, C. P. C. codifies this principle. It enables a party to apply to strike out, or compel the amendment of, the whole or any part of his opponent's pleadings which may be *unnecessary* or *scandalous* or which may tend to *prejudice, embarrass or delay the fair trial of the action*.

1. *Zierenberg and wife v. Labouchere*, 2 Q. B. 183.

2. *Gibbons v. Norman*, 2 T. L. R. 676.

3. *Blackie v. Osmaston*, 28 Ch. D. 119.

4. A. I. R. 1924 All. 17 (19).

5. A. I. R. 1940 Nag. 261 (262).

6. (1878) 7 Ch. D. 473 (486).

Unnecessary matters.—As a rule a matter in a pleading will not be struck out under this rule merely because it is *unnecessary*, unless it is also scandalous or embarrassing.¹ A pleading containing merely unnecessary matter without its being scandalous, or otherwise objectionable will only affect the cost of the pleading. But where the pleading besides containing unnecessary matter also attributes improper motives to the defendant or imputes dishonest conduct to the defendant or makes it embarrassing for the defendant or for the court, the court will order it to be struck out under this rule.

Scandalous matter.—Allegations made in a pleading for the mere purpose of abusing or prejudicing the opposite party and any indecent or offensive matters are scandalous.² A Court exercises general jurisdiction to prevent any of its processes being used for the purpose of disseminating scandalous and irrelevant matter. Where such matter is alleged in a pleading the court may order for the removal of the same. Thus where a plaintiff alleged in his plaint dishonest conduct against the defendant, but no relief was sought on that ground, the allegations were ordered to be expunged as scandalous and embarrassing.³ But a pleading or allegation which is imputed to be scandalous cannot be struck out, if it is necessary or relevant to the issue or one of the issues in action⁴, *e.g.*, in an heir's suit to set aside a will on the ground of undue influence of the legatee on the testator, the allegation that she (*i.e.*, the legatee) had immoral connection with the testator at the time, though scandalous, will not be struck out, because it is relevant.

Embarrassing matter.—A pleading is embarrassing if it is ambiguous or unintelligible or contains vague, unnecessary or irrelevant allegations, *e.g.*, a plea of justification in a libel case not specifying in clear terms how much of the libel the defendant intends to justify or too general so as not clearly to indicate what case the opposite party has to meet at the trial or when full particulars are not given when they are necessary. But a plea is not embarrassing merely because it is prolix⁵ or because it contains allegations which are inconsistent or stated in the alternative.⁶

It is pertinent to note that where only a part of the pleading is objectionable that part only will be struck out if it is severable from the rest, but if it is not so severable, the whole pleading

1. (1888) 38 Ch. D. 263 (270, (271).

2. (1873) 8 Ch. 499 (504) : 42 L. J. Ch. 544, *Christie v. Christie*.

3. *B. Rooking v. Mandslay*, 6 A. S. P. M. C. 13.

4. (1873) 8 Ch. 499 (504) : 42 L. J. Ch. 544, *Christie v. Christie*.

5. *Heap v. Marris*, 2 Q. B. D. 630.

6. *Moti Lal v. Judhistir*, 22 C. L. J. 254, 31. I. C. 181, 20 C. W. N. 310.

may be struck out.¹ Further, the amendment of any pleading may be ordered at any stage of the proceeding though the rule being discretionary the court may refuse to exercise its powers unless the application is moved at the earliest opportunity.

REJECTION OF PLAINT

Where a plaintiff does not disclose any cause of action *i.e.*, allegations which must be proved before a decree could be given, the defendant may move an application to the court for the rejection of the plaintiff under O. 7, R. 11, C. P. C. For example in a suit filed by a usufructuary mortgagee for the realisation of the mortgage money, if the plaintiff does not allege that the plaintiff was authorised to realise the mortgage-money by sale of the mortgaged property under the mortgage-deed, it does not disclose a cause of action and as such under the rule can be rejected. But a plaintiff under this clause, however, must be rejected only if the court comes to a definite finding that even if all the allegations are proved the plaintiff would not be entitled to any relief whatsoever. The *Calcutta High Court* has held that where a plaintiff does not disclose a cause of action the court has no option but to reject it and it has no jurisdiction to allow the plaintiff to be amended.² But the *Calcutta High Court* has held a contrary view in a recent case³ and the *Bombay High Court* has warranted that contrary view.⁴

REVISION OF ONE'S OWN PLEADINGS

(1) By filing further particulars.—Where a party discovers new matters not within his knowledge at the time when he filed original pleadings and intends to add such subsequently discovered particulars to the particulars already given, he may do so with the leave of the court. Without the leave of the court he cannot file further particulars.⁵ If he omits to deliver such subsequently discovered particulars, he cannot adduce evidence of these new facts. The Court generally grants such leave where the addition of particulars will cause no injury to the opposite party except such as can be compensated by costs.⁶ The application for leave should invariably be moved before trial.

(2) By filing additional pleading.—Where the original pleading is incomplete, a party may *by the leave of the Court*, file a

1. *Davy v. Garret*, 47 L. J. Ch. 218.

2. ('46) 50 Cal. W. N. 540 (540).

3. ('51) A. I. R. 1951 Cal. 262 (266).

4. ('50) A. I. R. 1950 Bomb. 345 (345).

5. *Emden v. Burmes*, 10 T. L. R. 400.

6. *Clarapade v. Commercial Union Association*, 32 W. R. 262.

written statement if plaintiff, or an additional written statement if defendant. Such additional pleading can be filed only by the leave of the court. The Code lays down "No pleading subsequent to the written statement of a defendant other than by way of defence to a set-off shall be presented except by the leave of the Court."¹ Even a minor cannot amend his pleading on attaining majority during the pendency of a case, nor can a minor defendant file an additional written statement without the leave of the Court.²

The additional pleading should not raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleading.³ *A* claimed one-half of £500 alleging that *B* the defendant, had received it as trustee for himself and the plaintiff *A* in equal shares. *B* pleaded that he received only £311, half of which he paid into Court. *A* thereupon replied that *B* ought to have received the full £500 and that having wrongfully compromised with the debtor, is liable for half of £500. *Held* that this was a new ground of claim which could not be allowed.⁴ And so if a statement of claim (*i.e.*, plaint) avers merely a negligent breach of trust, the reply must not allege that such breach of trust was fraudulent⁵, because the two allegations are inconsistent which law does not permit. Where a party intends to raise a new ground of claim or a fact inconsistent with his previous pleading, such party should apply to the Court for leave to amend his previous pleading⁶ and not for leave to file additional pleading.

(3) By amendment.—The last and not the least important way in which the parties can revise their pleading is by way of amendment. The law on the subject is embodied in O. 6, R. 17 of the Code of Civil Procedure. The provisions of the Code recite :

"The Court may at any stage of the pleading allow either party to alter or amend his pleading in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties."

It may be seen that no amendment is permissible without the leave of the Court and no amendment can be claimed as a matter of right. The matter absolutely lies in the discretion of

1. O. 8, R. 9, C. P. C.

2. ('35) A. I. R. 1935 Mad. 117 (117) (D.B.).

3. O. 6, R. 7, C. P. C.

4. (1876) 3 Ch. D. 254 (259) : 45 L. J. Ch. 738 *Earp v. Henderson*.

5. (1892) 29 L. R. 1 R. 364. *Kingstone v. Corger*.

6. *Hardial Singh, v. Sardarni Jaswant Kr.* 1943 (Lah.) 159.

of the Court, though the discretion must be exercised according to *judicial principles* and not in an arbitrary, vague or fanciful manner¹ or so as to cause injustice to the opposite side.² In exercising this discretion the court should be conscious that the rules of procedure have no other aim than to facilitate the task of administering justice³, that the multiplicity of suits should be avoided⁴ and that the interests of substantial justice be advanced.⁵

General principles of amendment.—The Code of Civil Procedure does not lay down any fundamental principles which the Courts should observe in dealing with applications for amendment. There is, however, no dearth of ruling on the subject. From these rulings the following general principles may be gathered :

(i) An amendment should be frequently allowed provided the other party is not seriously prejudiced and the character of the suit is not altered and provided the object of the amendment is not to abuse the powers of the Court and to work a clear injustice.

(ii) An amendment should not be allowed where it is not necessary for the purpose of determining the real question of controversy between the parties.

(iii) An amendment should not be granted where it would cause to the opposite party such injury as cannot be compensated by costs.

(iv) An amendment should not be allowed where it is not made in good faith ; and

(v) An amendment should not be allowed where it would change the character of the suit.

Where the amendment is not necessary for the purpose of determining the real question of controversy between the parties.—Such amendments are of purely technical nature and which will be useless if made. For example an objection that the suit is barred by section 47 C. P. C.⁶ And so where after the close of the plaintiff's case, the defendant by

1. ('56) A. I. R. 1956 Assam 79 (80) : I. L. R. (1955) 7 Assam 430 (D. B.).

2. ('49) A. I. R. 1949 Pesh. 14 (17).

3. ('33) A. I. R. 1933 Cal. 271 (273 274) (D. B.).

4. ('54) 1954 B. L. J. R. 297 (298).

5. ('51) A. I. R. 1951 Cal. 262 (264) : I. L. R. (1950) 1 Cal. 606.

6. *Nagendra Bala v. Secretary of State*, 10 I. C. 532, 14 C. L. J. 83.

amendmant seeks to take a purely technical objection to the maintainability of the plaintiff's suit.¹

The expression "questions in controversy" connotes such questions which are in controversy between the parties when written statement is filed but not questions which parties neither wish nor intend to dispute till that stage but which at a later stage they may think of raising".²

An amendment which would cause to the opposite party such injury as cannot be compensated by costs.—No amendment should be allowed if it causes injustice to the other party and there is injustice if the injury cannot be compensated by costs. Two principles should be considered when allowing amendment :

Does the amendment cause injury to the other party ? And if so can the injury be compensated by costs ? If the reply is in affirmative, the amendment should be allowed. If the reply is in negative, the amendment should be refused. For instance where the effect of amendment would be to prolong the proceedings or to necessitate fresh evidence, costs may be awarded for the inconvenience caused.³ *X* sued *Y* for injunction restraining him from executing his mortgage decree against certain properties on the ground that the mortgage deed was obtained by fraud. Subsequently he applied to amend the plaint by adding a new ground of claim, namely, that in any view his title was preferential to that of the defendant even apart from fraud. Held that the amendment should be allowed on payment of costs.⁴

An amendment not made in good faith.—Leave to amend should be granted where the applicant has acted *bona fide*,⁵ but refused where he has been acting *mala fide*.⁶ The Court should not presume *mala fide* on the part of the applicant from *great delay* in moving application for amendment.⁷

An amendment changing the character of the suit.—The Court should not allow an amendment which converts a suit of one character into a suit of another character. What an amendment should not alter is the fundamental character of the suit, that is the foundation on which the suit is based and not the

1. *Collette v. Goode*, 7 Ch. D. 842.

2. *Baniprasad v. Narayan Glass Works*, 1949 Ajmer 19.

3. ('27) A. I. R. 1927 Mad. 182 (183).

4. ('10) 8 Ind. Cas. 79 (81) (D. B.) (Cal.)

5. ('54) A. I. R. 1954 Ajmer 74 (75).

6. ('56) A. I. R. 1956 Ajmer 49 (49).

7. ('56) A. I. R. 1956 All. 439 (443) : I. L. R. (1956) 1 All. 24 (D. B.).

prayer in the plaint.¹ In *Ma Shwe Mya v. Maung Po Hnaung*,² their Lordships of the Privy Council observed: "All rules of Court are nothing but provisions intended to secure the proper administration of justice and it is, therefore, essential that they should be made to serve and be subordinate to that purpose, so that all powers of amendment must be enjoyed and should always be liberally exercised; but nonetheless, no power has yet been given to enable *one distinct cause of action to be substituted for another, nor to change, by means of amendment, the subject matter of the suit*". The reason behind the principle is that the replacement of the original case by a new case, can in no sense be called an amendment of the original claim. Following are the instances of the amendments introducing a change in the character of the suit—

(1) Suit for declaration of right to easement; amendment for declaration of title to the property in respect of which easement is claimed.

(2) Suit against manager of an idol; amendment for pleading idol as a party.

(3) Suit for possession; amendment into a suit for redemption,³ or into a suit to enforce a mortgage.⁴

(4) Suit to set aside a decree on ground of fraud; amendment for rectification on the ground of mistake.

(5) Suit for rent; amendment for damages for use and occupation.

(6) Claim on the basis that the defendant was a carrier; amendment into one based on liability as a bailee.

(7) Suit holding the defendant as tenant; amendment into a claim to eject the defendant as a trespasser.

(8) Suit for dissolution of partnership; amendment into one for remuneration for services.

Amendment in reliefs :—An amendment in the relief claimed in the suit does not entail change in the character of the suit and such amendment should be allowed if it does not cause injustice to the other side.⁵ The same principle applies to the addition of new relief in the plaint.

Amendment when allowed.—Rule 17, Order 6, allows amendment to be made *at any stage* of the proceedings. It may,

1. ('52) A. I. R. 1952 Assam 10 (12).

2. ('22) A. I. R. 1922 P. C. 249 (250, 251).

3. ('20) A. I. R. 1920 Bom. 64 (66).

4. ('20) A. I. R. 1920 Cal. 673 (674).

5. ('54) A. I. R. 1954 J. and K. 63 (64).

therefore, be allowed before or at, or after the trial or before the final decree in the case,¹ or in appeal,² or in second appeal,³ or in revision.⁴ The appellate Court may also direct the lower Court to amend the plaint and proceed with the trial.⁵ Mere delay in moving an application for amendment is no ground for rejecting the application. An amendment should also not be refused on the plea that the application is initiated after the demand for the deficit Court-fee if the application is otherwise proper.⁶ But where the application is filed at such a late stage that it must cause injustice to the opposite party, the application should but be refused.⁷

Amendment and limitation.—Where an amendment is granted the suit should be considered to have been brought on the date when it was instituted and not on the date when the amendment is allowed. But where the amendment introduces a new cause of action which has become time-barred, the suit will be considered to have been brought on the date when the amendment is allowed.⁸

Amendment and Court-fee.—Where the proposed amendment increases the valuation of the subject-matter of the suit and more court-fee is required to be paid, the plaintiff must pay it though not at the time when the application for amendment is moved. The Court cannot insist on its payment before amendment because the Court-fee originally paid becomes insufficient only after the amendment.

Amendment how made.—The pleading should not be returned for amendment but be kept on the court's file and the parties should be directed to amend it. Where, however, the Court has no *pecuniary jurisdiction* to try the suit the Court should return the plaint to the plaintiff who may amend it by withdrawing certain reliefs claimed and again present the same to the Court.⁹

It is not at all necessary that the amendment should be made on the face of the plaint itself, it may be carried out even on a separate sheet of paper, though it is usually done on the plaint itself.¹⁰

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1. ('51) A. I. R. 1951 Nag. 412 (414).
 2. Section 107 (2) C. P. C., A. I. R. 1954 Nag. 65 (69).
 3. Section 108 C. P. C. ('55) I. L. R. (1955) Cut. 163 (175) (D. P.).
 4. I. L. R. (1947) All. 433.
 5. ('50) A. I. R. 1950 All. 396 (398).
 6. ('49) A. I. R. 1949 Mad. 640 (641) (D. B.).
 7. ('42) A. I. R. 1942, Cal. 153 (163).
 8. *Ramkaran v. Baldeo*, 1938 (Pat.) 44 ; 173, I. C. 292.
 9. ('25) A. I. R. 1925, Mad. 1009 (1009).
 10. ('22) A. I. R. 1922 Bom. 385 (385) : 47 Bom. 104 (D.B.)

Where an amendment is allowed the opposite party should be given an opportunity to meet the new case by filing any additional statement or adducing any such further evidence as may be necessary.¹

Amendment on what terms allowed.—The Code of Civil Procedure vests this discretion in the Court and the court may allow amendment on such terms as may be just. The terms which the court generally imposes are that the cost of the application for leave to amend, and the costs occasioned by, and in consequence of, the amendment shall be paid by the party amending.² The terms should not prejudice the other party.³

Extent of amendment.—An amendment should be made only to the extent permitted by the court. Thus where only alteration in the parties was allowed and the plaintiff also altered the reliefs claimed in the suit, held, that the plaint should be taken as originally filed, though the unauthorised amendment was not objected to either by the court or by the opposite party.⁴

Consequences of failure to amend after order.—If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, he shall not be permitted to amend after the expiration of such limited time as aforesaid or of such fourteen days, as the case may be, unless the time is extended by the court.⁵ The suit will not be dismissed nor will the pleading be rejected or struck out, but the suit will continue on the original pleading. A fresh suit on the same cause of action can be instituted.⁶ Where the amendment is not carried out within the fixed time the court has discretion to extend the time and no appeal lies against the exercise of this discretion.⁷

1. ('56) A. I. R. 1956, Bhopal 16 (16).

2. ('51) A. I. R. 1951 Nag. 128 (129) : I. L. R. (1951) Nag. 279.

3. ('25) A. I. R. 1925 Mad. 737 (739, 740) (D.B.)

4. ('56) A. I. R. 1956 Him. Pra. 1 (2).

5. R. 18, O. 6, C. P. C.

6. ('27) A. I. R. 1927 Lah. 83 (83).

7. (0'9) 4 Ind. Cas. 492 (492) (D.B.) (All.).

CHAPTER V

PARTIES TO SUITS

Order I of the Code of Civil Procedure deals with the subject of parties to suits.

Joinder of Plaintiffs.—Several persons may be joined in the suit as plaintiffs where—

(a) the right to relief alleged to exist in each plaintiff arises out of the same act or transaction, and

(b) if such persons brought separate suits, any common question of law or fact would arise.¹

It is not necessary that every plaintiff should be interested in the entire subject-matter of the suit.²

Illustrations

(i) Several debenture-holders sued the directors of a company for misrepresentation in the prospectus. Held that though the plaintiffs had made *separate* contracts, their right to relief arose out of the *same transaction* and they could all join in one suit.³

(ii) A publishes a series of books as Oxford and Cambridge Universities publications when in fact they are not the publications of the said Universities. The two Universities join as plaintiffs against A in a suit for selling the books as their publications. It was held that the right to relief arose out of one transaction or series of transactions: if each publication was a separate transaction and that the question of publication and the belief that would be induced by such publication was common question of fact. The two Universities, therefore, could sue as co-plaintiffs.⁴

(iii) The plaintiffs brought a suit for the establishment of occupancy rights in their various holdings against the *shroetismdar*. The defendant denied the genuineness of the *muchilikas* alleged to have been executed by some of the plaintiffs. Several decrees obtained against some of the plaintiffs were also challenged as

1. O. 1, R. 1, C. P. C.

2. ('56) A. I. R. Assam 7 (8).

3. *Dringabier v. Wood*, (1899) 1 Ch. 393 (397).

4. *Oxford and Cambridge Universities v. Gill*, (1899) 1 Ch. 55 (59, 60); 68 L. J., Ch. 34.

having been fraudulently obtained. The suit was held to be bad for misjoinder as it involved different questions of law and fact in the case of the different plaintiffs.¹

(iv) The holders of pipe service in a temple filed a suit as co-plaintiffs for setting aside an order of dismissal passed by the trustee of the temple. The different plaintiffs had different shares in the inam. The charges of misconduct which formed the basis of the dismissal of the plaintiffs were also not identical. *Held* the plaintiffs could not join in the suit as each of their cases involved different questions.²

However, if the Court is of the opinion that any joinder of plaintiffs may embarrass or delay the trial of the suit, the Court may put the plaintiffs to their election or order separate trials or make such other order as may be expedient.³ The rule, however, applies only to cases in which the plaintiffs are properly joined ; it does not apply to cases of misjoinder of plaintiffs.⁴

Joinder of defendants.—*Several persons* may be joined in one suit as defendants where—

(a) any right to relief alleged to exist against them arises out of the same act or transaction ; and

(b) if separate suits were brought against such persons any common question of law or fact would arise.⁵

It is not at all necessary that all the defendants should be interested in *all* the reliefs comprised in the suit or that the liability of all the defendants should be the same.⁶ Further the *evidence* or *cause of action* against each of the defendants need not be the same. What is necessary is that the two conditions set forth above should be satisfied though in order to satisfy the second condition, it is sufficient if there is *one* question common to all the defendants.⁷

Illustrations

(i) A is defamed in a newspaper. A may join as defendant in the same suit, the proprietor, the editor, the printer and the publisher because all are jointly and severally liable for the publication and to continuance.

1. ('26) A. I. R. 1926 Mad. 1140 (1140).

2. ('26) A. I. R. 1926 Mad. 57 (57, 58).

3. O. 1, R. 2, C. P. C.

4. ('04) 26 All. 218 (220) (D.B.).

5. O. 1, R. 3, C. P. C.

6. ('23) A. I. R. 1923 Mad. 331 (332); O. 1, R. 5, C. P. C.

7. ('55) 59 Cal. W. N. 53 (55) (D.B.).

(ii) A receives injuries while riding in an omnibus belonging to X through a collision between that omnibus and a cart belonging to Y. A may join X and Y as defendants in one suit for damages for personal injury caused by their negligence because the injuries to the plaintiffs have arisen from the same transaction or series of transactions and the case involves common question of fact.

Where the plaintiff is in doubt as to the person from whom he is entitled to obtain redress, he may join two or more defendants in order that the question as to which of the defendants is liable, and to what extent, may be determined as between all parties.¹

The plaintiff may join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract including parties to bills of exchange, hundis and promissory notes.²

Misjoinder and of Non-joinder Parties.—Where a person who is a necessary party to a suit has not been joined as a party to the suit, it is a case of non-joinder of parties. Misjoinder may be misjoinder of plaintiffs or misjoinder of defendants. The former takes place when there are more plaintiffs than one and they are joined together in one suit but the right to relief alleged to exist in each plaintiff does not arise out of the same act or transaction and if separate suits were instituted no common question of law or fact would arise. The latter takes place when there are more defendants than one and all are joined together in one suit, but the right to relief alleged to exist against each of them does not arise out of the same act or transaction and if separate suits were instituted against each no common question of law or fact would arise. In other words joinder of parties in violation of the rules prescribed by the Code for the joinder of the parties is misjoinder of parties.

Effect of misjoinder or non-joinder of parties.—No suit shall be defeated by reason of the misjoinder or non-joinder of the parties and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.³ The Court may also at any stage of the proceedings, either upon or without the application of the other party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out and the name of any person

1. O. 1, R. 7, C. P. C.

2. O. 1, R. 6, C. P. C.

3. O. 1, R. 9, C. P. C.

who ought to have joined whether as plaintiff or defendant, or whose presence may be necessary in order to enable the Court effectively and completely to adjudicate upon and settle all the questions involved in the suit, be added.¹

A distinction may be perceived between the non-joinder of *necessary parties* and non-joinder of *proper parties*. Necessary parties are the parties in whose absence the Court cannot pass an effective decree at all.² On the other hand proper parties are the parties whose presence in a case is necessary in order to enable the Court to completely and adequately adjudicate on all the matters involved in the suit. Non-joinder of *proper parties* is not fatal to the suit.³ The Court can deal with the matters in controversy in so far as the parties actually before the Court are concerned.⁴ But in case of necessary parties, the Court cannot decide the suit at all in their absence.⁵ The Court should give an opportunity to the plaintiff to amend the plaint by adding the absent parties.⁶ If the plaintiff refuses to do so, the Court should dismiss the suit.⁷

No decree is to be reversed or substantially varied in appeal on account of any misjoinder or non-joinder of parties.not affecting the merits of the case or the jurisdiction of the Court.⁸

Objections as to Non-joinder or Misjoinder.—All objections on the ground of non-joinder or misjoinder of parties should be taken at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.⁹ It follows that objections as to misjoinder or non-joinder of parties should not be raised for the first time in Appellate Court.

An objection as to non-joinder cannot be taken by a defendant who has no interest in the subject-matter of the suit.¹⁰

The rule equally applies to misjoinder or non-joinder of parties to appeals.¹¹

1. O. 1, R. 10 C. P. C.

2. ('55) (5) A. I. R. 1955 Andhra 107 (108).

3. ('54) A. I. R. 1954 S. C. 210 (213).

4. ('55) I. L. R. (1955) Trav. Co. 489 (494-496) (D. B.).

5. ('54) A. I. R. 1954.

6. ('54) Madh. B. L. J. 1954 H. C. R. 145 (146).

7. ('50) A. I. R. 1950 All. 598 (603) : I. L. R. (1951) 2 All. (475) (F. B.).

8. Section 99, C. P. C.

9. O. 1, R. 13, C. P. C.

10. ('14) A. I. R. 1914 Oudh. 109 (111) (D. B.).

11. ('21) A. I. R. 1921 Mad. 243 (245) : Mad. 344 (D. B.).

Necessary Party refusing to join as Plaintiff.—If any person who ought to have been impleaded as plaintiff refuses to join as plaintiff, he may be impleaded as defendant in the suit.

Representative Suit.—The general rule is that all persons interested in a suit ought to be joined as parties to it. The representative suits filed under O. 1, R. 8 of C. P. C. form an exception to this general rule. Rule 8 enshrines : “Where there are numerous persons having the same interest in one suit, one or more such persons may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of or for the benefit of all persons so interested. But the Court shall in such case give, at the plaintiff’s expense, notice of the institution of the suit to all such persons either by personal service or where from the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct”. The rule reveals the following essentials of a representative suit :

- (i) the parties must be *numerous*.
- (ii) they must have the *same interest* in the suit (*e. g.*, a suit by a President or Secretary of an association).
- (iii) the *Court’s permission* must be obtained. The permission may be obtained either at the time of the institution of the suit or afterwards.
- (iv) *notice* must be given to the parties whom it is proposed to represent in the suit.¹

The language of this rule is quite comprehensive and can apply to all suits of whatever nature or description provided the conditions set in it are satisfied.² As such the provisions of this rule can be applied to a suit for partition of a village by the descendants of one brother against the descendants of the other brother alleging that the latter together had one-half share in the village.³

Under this rule, same suit may be representative one both as regards the plaintiffs and as regards the defendants.⁴

A decree passed in a representative suit operates as *res judicata* in a subsequent suit against all the interested persons although they may not have been added as parties to the suit.⁵

1. A. I. R. 1940 Mad. 789 ; 60 I. A. 278 ; 55 I. A.

2. (1952) I. L. R. (1952) 2 Raj. 900 (904) (D. B.)

3. *Ibid.*

4. (1935) A. I. R. 1935 Mad. 542 (543).

5. *Unmaravelu v. Ramaswami*, 26 Mad. 637.

Explanation VI to section 11 C. P. C. provides that where persons litigate *bona fide* in respect of a public right or a private right claimed in common for themselves and others, all persons interested in such right shall for the purposes of this section be deemed to claim under the person so litigating.

The rule has no application to an action for libel.¹

Suit in the name of wrong plaintiff.—Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a *bona fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks fit.²

Suit against a dead person.—Where a person against whom a suit has been filed is subsequently discovered to have died before the institution of the suit, the plaint cannot be amended by bringing his legal representative on record because a suit against a dead person is nullity *ab initio*.³ But if the defendants are several and only one of them was dead at the time of the institution of the suit, the suit will continue after substitution.⁴

PARTIES IN SPECIAL SUITS

Suits by or against Government.—In a suit by or against the Government, the authority to be named as plaintiff or defendant as the case may be, should be—

(a) in the case of a suit by or against the Central Government, in Union of India ; and

(b) in the case of a suit by or against a State Government, the State.⁵

Article 300 of the Constitution of India also provides that the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued in the name of the State.

Suits by or against Firms.—Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm. After the dissolution

1. *Walker v. Star* K. B. 930.

2. O. 1, R. 10, C. P. C.

3. *Veerappa v. Tudal*, 31 Mad. 86.

4. *Rup Chand v. Sunder Khan*, 9 Lah. 526.

5. Section 79, C. P. C.

of the firm too, the suit can be instituted in the name of the firm provided the firm existed at the time when the cause of action accrued,¹ though not at the time of the institution of the suit. Where the firm is carrying on business in a foreign country, the suit must be instituted in the name of all the partners of the firm. Since a joint Hindu family carrying on business cannot be called a partnership, a suit by or against a firm managed by a joint Hindu family, must not be brought in the name of the firm but by or against all the members or the manager of the family in his capacity as such manager.² The title in such suits should be like this—"XY, a firm carrying on business in partnership at Meerut".

Where a firm is made a defendant, the plaintiff must obtain the direction of the Court as to how the summons should be served, because O. 30, R. 2, stipulates that the summons can be served on any partner or manager "*as the Court may direct*".

A suit on behalf of the firm may be defended by any partner, but the partner must appear individually in his own name,³ though defence will be on behalf of the firm.

Suits by or against a Corporation.—A Corporation is an artificial person capable of holding legal rights and duties. There are two kinds of Corporation : (1) *Corporation Sole* which is an incorporated series of successive persons, *e. g.*, the Attorney General (2) *Corporation aggregate* which is an incorporated 'group' or body of co-existing persons united for the purpose of advancing certain ends of interest, *e. g.*, Municipal Corporations, Registered Societies, Clubs etc.

A suit by or against a *corporation sole* should be instituted in its corporate name, *e. g.* "The Advocate General for the U. P."

A suit by or against a *corporation aggregate* should be filed in the official name or style of the corporation⁴ and not in the name of its officers or through an agent. But where a corporation is by the statute incorporating it, permitted to sue or is required to be sued in some other name, in that case it should sue or be sued in that name. A title against a *corporation aggregate* should be like this "X, Y, a company private Ltd. having its registered office at Meerut".

1. O. XXX, R. 1, C. P. C.

2. *Lal Chand v. H. C. Bird and Co.*, 61 C. 975 ; *Motilal v. Girdharilal*, 1942 (Cal.) 613.

3. O. 30, R. 6, C. P. C.

4. *Siner Manufacturing Co. v. Baijnath*, 30 C. 105.

Registered societies may sue in the name of their President, Chairman, Principal, Secretaries or Trustees as may be determined by the rules of the society.¹

A suit by or against an unregistered society or Company should not be filed in the name of the society or company but by, or against all the members of the society or company. Where the number of such institutions is large, representative suit may be filed under Order. 1, R. 8, C. P. C.² But a representative suit in such cases is permissible only when there is a cause of action against all the members.

Suits by or against a Math.—The property of a Math vests in the Mahant of the Math and all suits by or against a Math should be instituted in the name of the Mahant.³

Suits for property vested in Idols.—A suit relating to property vested in idols should be instituted in the name of the idol and not in that of the Manager or Shebait.⁴ But an idol in suit must be represented by some sentient being. *e. g.*, the manager of its property. Thus title in such suit should read like this: “X Y, an idol installed in the temple at Saharanpur, through A. B. the manager of the temple”. However, where the manager declines to institute suit or where his interest is adverse to that of the idol, the idol should be represented by a disinterested guardian.⁵

Suits by or against Trustees.—In all suits concerning property vested in a trustee, executor or administrator, where the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator should represent the persons so interested and it is not ordinarily necessary to make them parties to the suit. But the court may, if it thinks fit, order them or any of them to be made parties.⁶

Where there are several executors, trustees or administrators, they should be made parties to a suit against one or more of them. But the executors who have not proved their testator's will, and trustees, executors and administrators outside India, need not be made parties.⁷

1. Section 6, Societies Registration Act 1960.

2. *Muhammadan Association v. Bakshi*, 6 A. 284.

3. *Thakurdwara v. Isher Das*, 9 Lah. 588.

4. *Jodhe Rai v. Basdeo*, 33 A. 735.

5. *Sharat v. Dwarka Nath*, 58 Cal. 619 ; *Maruti v. Shrigopal*, 34 Bom. L. R. 415, 418.

6. O. XXXI, R. I, C. P. C.

7. O. XXXI, R. 2, C. P. C.

Unless the court directs otherwise, the husband of a married trustee, administratrix or executrix should not as such be a party to a suit by or against her.¹

Suits by or against Minors and persons of unsound mind.—Every suit by a minor or a person of unsound mind should be instituted in his name by a person who in such suit shall be called the *next friend* of the minor or a person of unsound mind.² Similarly every suit against a minor or a person of unsound mind should be instituted in his name through a person who in such suit shall be called *guardian at litem*.³ A minor being incompetent to contract⁴ cannot be sued on a contract, but he can sue for the rescission of a contract. He can also sue for the cancellation of an instrument executed in his favour and to enforce a contract made in his favour.⁵ But however, he cannot sue to enforce contracts under which he has to discharge certain onerous obligations himself.⁶

Mortgage Suits.—All persons having an interest either in the mortgage security or in the right of redemption should be joined as parties to any suit relating to the mortgage.⁷

The undermentioned persons are necessary parties as being interested in the mortgage security.

- (i) The heir and assignees of the mortgagee's interest.
- (ii) Co-mortgagees.⁸

The undermentioned persons are necessary parties as being interested in the right of redemption.

- (i) Mortgagor.
- (ii) All co-mortgagors.
- (iii) Purchasers of the equity of redemption.
- (iv) Surety for the payment of mortgage debt.
- (v) Subsequent mortgagees.
- (vi) All other persons interested in the equity of redemption⁹ and in the proper taking of accounts.¹⁰

1. O. XXXI, R. 3, C. P. C.

2. O. XXXII, R. 1, C. P. C.

3. O. XXXII, R. 3, C. P. C.

4. Section 12, Indian Contract Act.

5. *Zafar v. Zubaida*, 1929 (All.) 609.

6. *Pramela v. Jogeshwar*, 3 Pat. L. J. 578.

7. O. XXXI, R. 1, C. P. C.

8. ('48) A. I. R. 1948 (Bom) 211 (219).

9. ('53) A. I. R. 1953 Bom. 315 (317).

10. ('74) 6 N. W. P. H. C. R. 208 (210) (D. B.).

The below mentioned persons are not necessary parties to a suit relating to a mortgage.

- (i) A prior mortgagee.¹
- (ii) A person merely in possession of the mortgaged property.²
- (iii) A person having merely an inchoate title to the property.³
- (iv) A person acquiring right of redemption by transfer or adverse possession during pendency of suit.⁴
- (v) A Receiver appointed in a partition suit previous to the mortgage suit.⁵
- (vi) A person who has a right to be maintained out of the income of the mortgaged property when such right is not made a charge on the property.⁶
- (vii) Where a number of persons own the equity of redemption in distinct shares and the mortgagee in his suit on the mortgage exempts one or more of such shares and claims only a decree for a proportionate part of the mortgage debt, the owners of the exempted shares are not necessary parties.⁷
- (viii) Where a mortgagee has, through negligence allowed strangers to trespass upon and acquire parts of the mortgaged property, such persons are not necessary parties to a suit for redemption.⁸

Suits against Foreign Rulers, Ambassadors and Envoys.— A suit against Foreign Rulers, Ambassadors and Envoys cannot be filed in any court except with the consent of the Central Government certified in writing by a Secretary to that Government. But a person may, as a tenant of immovable property, sue without such consent as aforesaid a foreign Ruler, Ambassador or Envoy from whom he holds or claims to hold the property.⁹

1. Explanation to Rule 1, Order XXXIV C. P. C.

2. ('53) A. I. R. 1953 Nag. 4 (5).

3. ('85) 9 Bom. 10 (14, 15) (D. B.).

4. ('55) (S) A. I. R. 1955 Nag. 238 (239).

5. ('28) A. I. R. 1928 Pat. 304 (315).

6. (1900) 22 All. 191 (199).

7. ('05) 32 Cal. 746 (748) (D. B.).

8. ('22) A. I. R. 1922 Bom. 156 (157) : 46 Bom. 218 (D. B.).

9. Sec. 86, C. P. C.

Suits by Foreign States.—A foreign State may sue in any competent court in India provided that the object of the suit is to enforce a private right vested in the Ruler of such state or in any officer of such State in official capacity.¹

Suits by Alien Enemies and Alien Friends.—Alien enemies residing in India with the permission of the Central Government, and alien friends, may sue in any court otherwise competent to try the suit, as if they were citizens of India, but alien enemies residing in India without such permission, or residing in a foreign country, shall not sue in any such court.² Every person residing in a foreign country, the Government of which is at war with India and carrying on business in that country without a license in that behalf granted by the Central Government, shall be deemed to be an alien enemy residing in a foreign country.³

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CHAPTER VI

FRAME OF SUIT

Order 2 of the Code of Civil Procedure deals with the frame of suit.

The first principle to be observed in framing a suit is that the suit should as far as practicable be so framed so as to afford ground for final decision upon the *subjects in dispute* and to prevent further litigation concerning them.⁴ The expression 'subjects in dispute' has nowhere been defined in the Code. But a study of decisions on the expression reveals that the expression refers to the right claimed by one party against the other with reference to a particular legal relation or transaction between the parties. To be more practical, the expression means "the cause of action or the subject-matter of litigation, that is the right which one party claims as against the other, and demands the judgment of the Court upon."⁵ In the light of this construction, it may be said that the "present rule requires the plaintiff to bring forward his *whole case* as to the particular legal relation or transaction on which his suit is based, but does not require

1. Sec. 85, C. P. C.

2. Sec. 83, C. P. C.

3. Explanation, *Ibid.*

4. Order 2, Rule 1, C. P. C.

5. ('03) 26 Mad. 760 (766) (D.P.).

him to raise in the same suit matters pertaining to a different legal relation or transaction, although such matters have a bearing on the right claimed by the plaintiff.¹ Thus it is not necessary that the plaintiff should necessarily unite all the causes of action which he may have against the defendant in respect of the *corpus* of the suit, though, of course, he is at liberty to do so, if he likes.² Thus where *X* sues *Y* to recover certain property on the ground that he had acquired title to the property by *adverse possession* and he fails to prove his claim, he cannot sue again to recover the same property on the ground of his *general title*,³ the reason being that where a plaintiff sues as an owner he should bring before the court in the same suit all the grounds of attack available to him with reference to his claim for ownership.⁴ But if *A* sues *B* to recover certain lands on the ground that *B* held them as lessee under *A* and that the lease had expired, and *A* fails to prove the lease and sues again for the recovery of the same lands on the ground of his general title, the second suit is not barred because the legal relation between the parties in the second suit is different from that in the first.⁵ Likewise, where a person sues to redeem a specific mortgage of a certain property and upon his failure to prove the mortgage, files another suit to redeem another specific mortgage on the same property, the second suit is not barred because the transactions between the parties on which the suits are based are different.⁶

But the rule should be followed "*as far as practicable*". Thus where the plaintiff would be embarrassed in his suit, *e.g.*, where the evidence in support of one ground of his claim is destructive of the other ground, he is not bound to bring into the same suit, both the grounds of his claim.⁷

The second rule of framing of suit prohibits the *splitting up of a cause of action*. The rule requires that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action.⁸ But the rule does not require the plaintiff to unite in one suit every cause of action or every claim which he might have against the defendant⁹ though in

1. A. I. R. Commentaries Vol. II, P. 2014.

2. U. Po. Ke v. U. Po. Thein. 161 I. C. 820, 1936 Rang. 167.

3. ('73) 18 Suth. W. R. 163 (164, 165) P. C.

4. ('08) 31 Mad. 385 (391, 396), Sec. 11, Expl. VI, C. P. C.

5. ('99) 22 Mad. 323 (325) (D.B.).

6. ('02) 26 Mad. 760 (775, 776) (D. B.).

7. ('08) 31 Mad. 385 (396).

8. O. 2, R. 2, C. P. C.

9. *Parashram v. Sadasheo*, 1936 (Nag.) 268.

respect of the same subject matter.¹ Violation of the rule debars the plaintiff from bringing another suit for the portion so omitted or relinquished.² The intentional or accidental character of the omission is immaterial.

Illustrations

(i) **Intentional omissions.**—*A* is the adopted son of the adoptive mother *B*. Both of them gift a House *C* in favour of *D*, but the gift remains invalid as it was not attested. *M*, the adoptive mother, further transfers property *H* in favour of *D*. *A* brings a suit to recover his adoptive father's property including *C* against *B* and later on joins *D* also as defendant, claiming the alienated property *H* from him but making no claim for the House *C* against him. A decree is passed against *D* for property *H*, but no decree is passed against *D* for the House *C*. *A* then files another suit against *D* for the possession of the House *C*. The second suit is barred under this Rule as he omitted to claim the said relief against *D* in the previous suit.³

(ii) **Accidental omission.**—A Muslim wife brought a suit to recover property worth Rs. 10,000 from her husband and the suit is decreed in her favour. By an oversight she omitted to include a property worth Rs. 500/- and she brought another suit for the same. Held that the suit was barred because she was aware of her claim at the time of instituting the first suit.⁴

(iii) **Relinquishment.**—*A* owes Rs. 2200/- to *B*. *A* files a suit for the recovery of Rs. 2000/- only in the court of small causes by intentionally relinquishing the claim for Rs. 200/-. *A* cannot afterwards file another suit for the recovery of Rs. 200/-.⁵

The omission, however, does not bar a second suit when the plaintiff at the time of the institution of the first suit was not aware of his right to claim omitted by him.⁶

A cause of action may be distinguished from the same transaction. A cause of action is the bundle of facts and circumstances which the plaintiff must prove in order to entitle him to the relief claimed; A transaction may give rise to several causes of action and the law does not require that a plaintiff must join all causes of action in one suit. For instance in a

1. *Rangier v. Ramia*, 1930 (Mad.) 264.

2. O. 2, R. 2, C. P. C.

3. *Chaniappa v. The Bagalkot Bank*, I. L. R. 1943, Bom. 49.

4. *Buzloor Ruheem v. Shumsoonissa* 11 M. I. A. 551.

5. *Ramlall v. Bhajahari*, (1896) I. C. W. N. 32.

6. *Dasrathy v. Pala*, 45 I. C. 969.

collision with the defendants' car, the plaintiff receives injuries and also his cycle is damaged. The transaction *viz.*, collision is one but two causes of action accrue to the plaintiff *viz.*, (i) injury to his body and (2) damage to his cycle. The plaintiff may join both the causes of action in one suit, but he is not bound to do so and he can bring two suits one for compensation for bodily injury and another for compensation for damage to his cycle. But he cannot file one suit for injury to his hands and another suit for injury to his head, for the cause of action is one and the same. Thus in respect of one transaction, the plaintiff can file as many suits as the causes of action have accrued from the transaction, but he can file only one suit in respect of one cause of action.

An *obligation* and a *collateral security* for its performance though otherwise distinct, should be regarded as one for the purpose of this rule. And so the successive claims arising under an obligation.¹ Thus where the rent for three years is due and unpaid, and a suit is instituted for only two years and another suit for the remaining one year would be barred.²

JOINDER OF CAUSES OF ACTION

A plaintiff may unite in the same suit several causes of action against the same defendant or defendants provided all the defendants are *jointly interested* in all the causes of action.³ For example *A* and *B* execute several promissory notes in favour of one *C*, *C* may sue them jointly on all the promissory notes in a single suit. And so any plaintiffs having causes of action in which they are *jointly interested* against the same defendant or defendants jointly may unite such causes of action in the same suit.⁴ For example, if *A* executes several bonds on different dates in favour of *B*, *C*, *D* and *E* jointly, the latter four can sue *A* on all the bonds in a single suit. The main thing to be considered in the joinder of causes of action by or against several persons is the *joint interest* of the persons. The test is whether there is community of interest in the case to be determined.⁵ The mere similarity of interest is of no help. Thus a suit for possession by redemption against one set of defendants and for possession by ejectment against other defendants cannot be allowed.⁶ Likewise where *A* and *B* execute one bond in favour of *C* and *B* and *D* jointly execute

1. Expl. to Rule 2, Order 2, C. P. C.

2. Illustration to Expl. Rule 2, Order 2, C. P. C.

3. O. 2, R. 3, C. P. C.

4. O. 2, R. 3, C. P. C.

5. *Bhagwati v. Bindeshari*, 6 A. 106 (108).

6. *Anand Swarup v. Asad Ali*, 14, A. L. J. 342, 28. I. C. 602.

another bond in favour of the same *C*, *C* cannot bring a single suit against *A*, *B* and *D* on the two bonds, claiming a certain amount against *A* and *B* and certain amount against *B* and *D*.

But when the causes of action arise from the *same transaction* and there is a common question of law or fact, joinder of several causes of action in one suit by or against several persons is permissible even in the absence of their joint interest in the suit.¹ For example if *X* and *Y* are prosecuted by one *M* for an offence and are acquitted, though the causes of action for suits for malicious prosecution by *X* and *Y* are different, yet they can bring a joint suit, because the causes of action arise from the same transaction (*viz.*, the act of *M*) and because common questions of law and fact would arise.

Limitations.—The rule permitting the joinder of several causes of action by or against the several persons is qualified by the following two limitations :

(1) No cause of action shall, unless with the *leave of the court*, be joined with a suit for the recovery of immovable property except—

(a) claims for *mesne profits* or arrears of rent in respect of the property claimed or any part thereof ;

(b) claims for damages for breach of any contract under which the property or any part thereof is held ; and

(c) claims in which the relief sought is based on the same cause of action (*e.g.*, joinder of claims for the recovery of both movable and immovable property in one suit, that is, in a suit for possession of an impartible estate, a claim to recover rents, royalties and other monies collected by the defendant can be joined).

But, a party may in a suit for foreclosure or redemption, ask to be put into possession of the mortgaged property.²

The following suits are not the suits for the recovery of immovable property.

(i) A suit for declaration of title.³

(ii) A suit for specific performance of a contract to sell immovable property.⁴

1. O. 1, Rr. 1. and 3.

2. O. 2, R. 4, C. P. C.

3. *Gledhill v. Hunter*, (1880) 14, C. D. 492.

4. *Govinda v. Mana Vikrama* (1891) 14 Mad. 284.

(iii) A suit for recovery of a mortgage debt with an alternative prayer for sale of the mortgaged property.¹

(iv) A suit to restrain trespass.

(v) A suit for arrears of rent.

(2) No claim by or against an executor, administrator or heir, *as such*, shall be joined with claims by or against him *personally* unless the last mentioned claims (i) are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or (ii) are such as he was entitled to, or liable for, jointly with the deceased persons whom he represents.²

The words 'as such' used in the rule require special attention. The suit brought by an executor, or administrator must be in *representative* and not personal capacity. The suit must be representative suit. Thus a suit brought by an heir in respect of property inherited by him and which has thus become his personal property, cannot be said to be a suit brought by him as such heir (*i.e.* representative capacity), but a personal suit to which he can join any other personal cause of action.

Illustrations

(i) A, a tenant of some property gives a lease of it to B. A dies leaving a will of which M who was the remainderman, is the sole executor. One year after the death of A, M sues B (a) for arrears of rent due to the estates of A and (b) for rent due to him personally subsequent to the death of A. The first claim by M is in the capacity of an executor and, the second is by him personally as a remainderman. M's claim in personal capacity does not arise with reference to the estate of A of which he (M) is the executor. Held the two claims cannot be joined together in the same suit.³

(ii) A Mahomedan dies leaving a widow and a daughter by a predeceased wife. The widow sues the dower (daughter of her husband's predeceased wife) (a) for her daughter, and (b) for share of inheritance in her husband's estate. It was held that the widow can do so as in the second case she is not claiming as representing her husband's estate, but for her own and personal benefit.⁴

1. *Govinda v. Mana Vikrama*, (1891) 14 Mad. 284.

2. O. 2, R. 5, C. P. C.

3. *Tredgar v. Roberts*, (1914) 1, K. B. 283.

4. *Ahmed Uddin v. Sikondar*, 18 All. 256.

(iii) A Hindu widow in one suit may claim against her husband's executors (a) ornaments forming part of her stridhan, and (b) her share in her husband's estate.¹

Court's Power to Order Separate Trials.—Where it appears to the court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the court may order separate trials or make such other order as may be expedient.² The power given by the rule should be exercised only before the first hearing, unless the parties otherwise agreed.³ Further this power vests discretion in the court, the defendant cannot claim it as of right. Where the court orders separate trials, it should deal with separate causes of action as sub-suits under the title and number of the principal suit from which they spring,⁴ and should not order the plaintiff to file separate plaints.⁵

If the trial court does not exercise power under this rule but tries all the causes of action together, the Appellate Court should not interfere with the discretion of the trial court in that matter.⁶

Objections as to Misjoinder of Causes of Action.—The joinder of causes of action in violation of the Rule 3 of Order 2 of the Code, will be misjoinder of causes of action. All objections on the ground of misjoinder of causes of action must be taken at the earliest possible opportunity and, in all cases where issues are settled, at or before such settlement, unless the ground of objection has subsequently arisen, and any such objection not so taken shall be deemed to have been waived.⁷ The objection to misjoinder should be moved by filing a written statement and not by mere application.

The objection of misjoinder cannot for the first time be taken in appeal or in second appeal.⁸

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1. *Hafizaboo v. Mahomed*, 31 Bom. 105.
 2. O. 2, R. 6, C. P. C.
 3. ('97) 20 Mad. 360 (352) (D. B.).
 4. ('51) A. I. R. 1951 Simla 233 (235).
 5. *Ibid.*
 6. ('41) A. I. R. 1941 Oudh 56 (58) : 16 Luck. 113.
 7. O. 2, R. 7, C. P. C.
 8. ('50) A. I. R. 1950 Pepsu 7 (8) : 1 Pepsu L. R. 180.

CHAPTER VII

PLAINT

A plaint may be divided into three parts, *viz.*

Part I—The Heading and Title.

Part II—The Body of the Plaint.

Part III—The Relief Claimed.

Part I—*Heading and Title.*

Heading.—The heading consists of the name of the court in which the suit is brought¹, the number and year of the suit. Where a court *e.g.*, the High Court exercises various jurisdictions, the jurisdiction of the court in which the suit is instituted should also be specified below the name of the court. The number of the suit is marked by the court as such a space should be left blank for that. It is not necessary that the name of the presiding officer of the court should also be specified. Thus heading in a plaint should be written like this.

“In the Court of City Munsif
at Meerut
SUIT No.....of 1963.”

Where the court exercises various types of jurisdiction, the heading in a plaint should be written like this.

“In the High Court of Judicature, at Allahabad
Matrimonial Jurisdiction

or

Testamentary Jurisdiction

or

Ordinary Original Civil Jurisdiction

SUIT No.....of 1963.”

Title.—Next to the heading comes the “Title” which comprises :

(i) The name, description and place of residence of each plaintiff; and

1. Order 7. Rule 1 (a); C. P. C.

(ii) The name, description and place of residence of each defendant.¹

The object is to ensure correct particulars regarding the parties so far as they can be ascertained, so that there may be no mistake with regard to the identity of the parties to the suit. The full description of the party and the character in which he sues or is sued should be specified in the plaint.² The word 'description' covers father's name, age and such other particulars as are necessary to ascertain the identity of a person. Thus the title by which the defendant is generally known should also be given.³ If a person is sued in two capacities, law does not require that his name should be given twice in the title. It would be sufficient to indicate the two capacities in the body of the plaint.⁴

The place of residence of the defendant should be accurately stated.⁵ Likewise the place of residence of the defendant should be specified as accurately as can be ascertained. Vague statements as to the defendant's place of residence such as carrying on business in Calcutta,⁶ or "formerly in Calcutta, now residing in Kashmir"⁷ should not be given. Where the plaintiff has failed to collect full particulars regarding the place of residence of the defendant, a paragraph to that effect should be included in the plaint.⁸ This fact should not be given in the 'title' of the plaint. Where a corporation sues or is sued, the plaintiff or the defendant as the case may be, is the corporation itself and it is sufficient to give the name, description and place of business of such corporation. The particulars of the person who purports to sign the pleading need not be given.

Where the number of plaintiffs or defendants exceeds one, a serial number should be given to each of the plaintiffs and defendants. The order in which the serial number should be given is immaterial, but it is better to give them serial number in the order in which they have played their role alleged in the plaint. For example if in a mortgage, suit, the defendants involved are, the mortgagor, his son and two subsequent transferees the order should be the mortgagor the first defendant, son the second

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1. O. 7, R. 1 (b) (c), C. P. C.
 2. ('25) A. I. R. 1925 Nag. 183 (184).
 3. ('72) 18 Suth. W. R. 301 (302, 303) (P. C.).
 4. ('41) A. I. R. 1943 Cal. 319 (327).
 5. ('79) 4 Cal. L. Rep. 366 (370).
 6. (31) A. I. R. 1931 Cal. 458 (462).
 7. ('79) 4 Cal. L. Rep. 366 (371).
 8. ('31) A. I. R. 1931 Cal. 458 (461).

defendant, the transferees the third and the fourth defendants in the 'order of the dates of their assignments'. Defendants impleaded as a matter of form should be placed last of all.

A suit by or against a *minor* or a *person of unsound mind* cannot be instituted except in his name through a next friend or *guardian ad litem*. Where any of the parties to a suit is a minor or a person of unsound mind, he should be so identified in the title of the plaint. When the plaintiff is minor, the title and description of the minor should be.

"X son of . . . , a minor by his next friend Y, son of....."

Similarly when the defendant is minor, the title and description of the minor defendant should be:

"X a minor by guardian *ad litem* Y."

It is however, pertinent to note that a defect or misdescription in the title for example where the mother of the minor plaintiff describes herself as *J*, for herself and as guardian of her minor daughter *S*, is not fatal to the suit.¹ The mistake is merely formal and does not afford a ground *per se* for interference in appeal.²

Order VII, rule 4 of the Code of Civil Procedure lays down that where the plaintiff sues in a representative character the plaintiff shall show not only that he has an actual existing interest in the subject matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it. The rule does not make it obligatory that the capacity in which the plaintiff sues should be stated in the 'title' of the plaint. But the practice and convenience is to make such description. Such description should assume the following form.

"A. B.....on behalf of himself and all other creditors of C. D., late of (*add description and residence*)"

or

"A. B.....on behalf of himself and all other holders of debentures issued by the..... company limited".

or

A. B. son of.....as manager of a joint Hindu family."

Form given at No. (2) in Appendix A to the First Schedule of the Code of Civil Procedure also points out that a party suing in representative capacity should give a description of his representative capacity in the title of the plaint.

1. ('86) 12 Cal. 48 (49) (D. B.).

2. ('87) 14 Cal. 159, (163, 164) (F. B.).

PART II—*Body of the Complaint.*

The body of the complaint consists of the plaintiff's statement of his claim and of other particulars which he is under law required to state. It should be worded in narrative form, in third person and divided into separate paragraphs each covering one fact only. It should be prefaced by the following words.

"The above-named plaintiff states as follows"—

The body of the complaint consists of two portions :

- (1) the formal portion, and
- (2) the substantial portion.

(1) **The formal portion.**—The formal portion of the complaint comprises the following particulars :

- (i) the facts showing the cause of action and when it arose.¹
- (ii) Facts showing that the court has jurisdiction.²
- (iii) A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court-fees as far as the court admits.³
- (iv) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect.⁴
- (v) Where the plaintiff sues in a representative character a statement that he has an actual existing interest in the subject-matter and that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.⁵
- (vi) A statement to the effect that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.⁶
- (vii) Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the ground upon which exemption from such law is claimed.⁷ Each of these particulars should be given in a separate paragraph of the complaint. But particulars specified in clause (i) and (ii) may be stated in one paragraph as has been done in the Forms given in Appendix A

1. O. VII, R. 1 (e), C. P. C.
2. O. VII, R. 1. (f), C. P. C.
3. O. VII, R. 1. (i), C. P. C.
4. O. VII, R. 1. (d), C. P. C.
5. O. VII, R. 4, C. P. C.
6. O. VII, R. 5, C. P. C.
7. O. VII, R. 6, C. P. C.

to the Code of Civil Procedure. (law requires that these Forms where applicable, and where they are not applicable, forms of the like character should be used for all pleadings.)¹ For example: "The cause of action for the suit arose on November 23, 1963 and the defendant resides within the jurisdiction of the court."

Date of cause of action.—Cause of action means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to assert his right to the Judgment of the court. It consists of all those facts which the plaintiff must prove to establish his case. It means the necessary conditions for the maintenance of the suit.² It refers entirely to the ground set forth in the plaint as the cause of action, or in other words to the *media* upon which the plaintiff asked the court to arrive at a conclusion in his favour.³

It is necessary for the plaintiff to state specifically when the cause of action for the suit arose.⁴ This is intended to enable the court or the defendant to ascertain from the plaint whether there is a cause of action and whether it is not barred by the law of limitation.⁵ Further the date of the cause of action should be accurately given. Where the date of cause of action for the suit was stated as "previous to August 21, 1869" and it was not made clear that the suit was within time, the plaint was ordered to be taken off the file.⁶

The Code does not lay down any law as to the date of the accrual of the cause of action. Order 7, Rule 1 clause (e), which speaks for the essentials itself is silent on the point. It may be pointed out that the date of the accrual of the cause of action means *the date of that event which makes the cause of action for the suit complete ; to be more practical the date of that event which gives the plaintiff the right of suit, e. g., in case of breach of contract, the date of the breach of the contract.* It may be distinguished from any previous fact which constitutes a part of the cause of action (*e. g., date of the contract*) and also from any subsequent event which is not essential to give rise to cause of action, *e. g., the date of demand of damages and defendant's refusal.* But it may be noted that mere inaccuracy in the date, *e. g., giving the date of contract instead of the date of breach,* is not fatal if defendant is not

1. O. VI, R. 3, C. P. C.

2. *Chand Kumar v. Partap Singh*, 16 Cal. 98.

3. *Murti v. Bhola Ram*, 16 All. 165 (F. B.).

4. ('32) A. I. R. 1932 Cal. 259 (261, 262).

5. ('28) A. I. R. 1928 Lah. 516 (526).

6. *Sonamul v. Sunara*, 8 B. L. R. App. 123.

prejudiced thereby.¹ If all the facts constituting the cause of action have been accurately given, a wrong inference as to the date of the accrual of the cause of action is not fatal.²

Thus it is the actual date on which the event constituting the cause of action happened should be given and not any subsequent event. For example in a suit or bond, the date of the bond or the date of the payment fixed in it should be given and not the date on which payment was last demanded and refusal was made. Similarly in an ejectment suit it is the date on which the defendant took wrongful possession of the property that should be given and not the date on which the defendant refused to vacate the possession. These allegations of demand and refusal as constituting the cause of action should not be given in the plaint. There are, however, certain cases in which demand alone gives rise to cause of action for the suit *e. g.*, in a suit for accounts against an agent during the existence of agency, for refund of money deposited with a banker. In such cases when demand is made and refusal is returned thereto, the cause of action arises. The expression "on demand" used in negotiable instruments, however, does not mean that payment is to be made only when demanded but that they are payable forthwith and no demand is necessary. The limitation in such negotiable instruments starts from the date of their execution. In cases where a certain date has been fixed for payment, no demand is necessary *e. g.*, in cases for recovery of damages for breach of contract or for tort. In short demand should not be specified as constituting the cause of action for the suit except in cases in which the period of limitation starts from the date of demand.

Jurisdiction.—The plaint should contain a statement of the facts showing that the court has jurisdiction. It is not sufficient to say merely : "That the court has jurisdiction to try the case" or "The court has in every way jurisdiction over the case." Sections 16, 17, 18, 19 and 20 of the Code of Civil Procedure lay down the rules for determining the *forum* or venue for the institution of a suit. Briefly these rules are : Every suit must be instituted in the court of the lowest grade competent to try the suit. All suits relating to immovable property must be filed in the court within the local limits of whose jurisdiction the property in question is situate. In case immovable property is situated within the local limits of the jurisdiction of more than one court, suit may be filed in either court subject to the pecuniary jurisdiction of either court. Suits for compensation for wrong done to the person or to movable property may be filed at the place where the wrong was committed

1. *Abdul Shakur v. Rojendra Kishore*, 1935 (All.) 759, 155 I. C. 1092.

2. *Firm Sitaram Bindraban v. G. I. P. Ry.*, 1947 Nag. 224.

and cause of action arose or at the place where the defendant resides or personally works for gain. All other suits may be instituted at a place where the defendant or where there are more than one defendants any of them actually and voluntarily resides or carries on business or works for gain or where the cause of action, wholly or in part arises. The plaint must give the grounds on which the court in which the plaint is filed has jurisdiction to try the suit. For instance, "That the property in respect of which this suit is brought is situate within the jurisdiction of the court" or "that the defendant committed the wrong complained of in this plaint at Meerut within the jurisdiction of the Court," or "That the defendant resides within the jurisdiction of this Court". The facts showing the jurisdiction of the court should be specifically alleged in the plaint and not left for the inference of the court, *e. g.*, where the jurisdiction of the court is pleaded on the ground of residence of the defendant, it is not sufficient that the residence of the defendant is given in the heading of the plaint.¹

PLACE OF SUING IN PARTICULAR CASES

Suits for breach of contract.—The cause of action arises at the place where the contract was made, at the place where it was to be performed or at the place where the breach of the contract takes place. The suit may be brought at either of the three places.

Debtor and Creditor.—The suit is to be brought where the payment of debt has been agreed to be made. In the absence of any such agreement the suit is to be instituted where the creditor resides.

Partnership Suits.—A suit for the accounts of a dissolved partnership is to be instituted either at the place where the agreement of partnership was signed or where the business of partnership was carried on. Where business of partnership was carried on at two places a suit for dissolution of partnership can be brought at either of the two places and also at the place where the partnership accounts were maintained.²

Carrier.—A suit for refund of freight, for damages for short delivery and for general average account can be brought where the freight was collected or where the goods were delivered.

Principal and Agent.—A suit can be filed either at the place where the contract of agency was signed, or at the place where

1. *Ram Prasad v. Hazarimull*, 134 I. C. 538 ; 1931 (Cal.) 458 ; 58 C. 418.

2. *Hari Kishan Das v. Ramji Das*, 108 I. C. 51.

the accounts are to be given or at the place where the payment is to be made by the agent.

Contract of Sale.—A suit for damages for non-delivery of goods is to be instituted at the place where delivery and payment were to be made.

Custody of Ward.—A suit by a guardian for the custody of his ward is to be filed at the place from where the ward was removed or at the place to which the ward was removed.

Suit for Negligence.—A suit for damages, loss or death caused by negligence is to be instituted at the place of damages, loss or death.¹

Suit on Tort.—The suit lies where the wrong was committed or where the tort-feasor resides or carries on business.²

Copy Right.—A suit for infringement of copy right lies at the place where the defendant resides or where the copy right is infringed.

Conjugal Rights.—A suit for restitution of conjugal rights lies at the place where the husband resides or at the place where the wife resides.³ But if the wife has not resided with the husband, the suit is to be brought at the place where the wife resides.

Negotiable Instrument.—A suit on negotiable instrument lies at the place where the promissory note is drawn, signed and dated.

Misrepresentation.—The suit is to be instituted at the place where the misrepresentation has been committed.

Malicious Prosecution and wrongful Arrest—The suit lies at the place where the malicious prosecution takes place or where the arrest is made.

Libel or Defamation.—The suit is to be instituted either at the place where the defendant resides or where the publication is made. Where the libel is published in newspaper, the suit may be instituted at any place wherever the paper is read.

Corporation.—A Corporation shall be deemed to carry on business at its sole or principal office in India or in respect of any cause of action arising at any place where it has also a subordinate

1. *Sheo Narain v. B. B. and C. I. Rly.* 41 All. 488.

2. *Gokuldas v. Chagan Lal* 1928 Cal. 887.

3. 18 Bombay 316 ; A. I. R. 1919 All. 96.

office, at such place.¹ As such the suit lies at the principal place of business or where subordinate offices are situate at the place where the subordinate offices are situate in respect of a cause of action arising there.

Valuation of Suit.—The plaintiff must distinctly give in his plaint the valuation of the suit for the purposes of Court-fees and jurisdiction. As the two valuations are not same in several cases, they should be stated specifically.² The valuation for the purpose of Court-fee is required only in those cases in which *ad valorem* Court-fee on valuation is paid, *e. g.*, suits for the recovery of money and property. In such cases the valuation enables the Court to see whether the Court-fee paid by the plaintiff is sufficient or not. Where Court-fee is to be paid according to the value of the property, the value of the property should be given. Where some other basis is prescribed for computing Court-fee that basis should be stated. In suits where fixed Court-fee is to be paid under law, *e. g.*, suit for restitution of conjugal rights, it is sufficient to say that a fixed Court-fee has been paid on the plaint. Where the plaintiff claims relief arising out of the same cause of action, the plaintiff should state the *aggregate* value of his reliefs, but if he claims reliefs in respect of two or more distinct causes of action he should state the valuation of each cause of action separately, as the Court-fee is separately payable in respect of each.³ Whenever the plaintiff prays for reliefs in the *alternative*, he must give his valuation in respect of the two reliefs, and the Court-fee is to be paid on the value of the larger relief.⁴

The valuation of the suit *for the purpose of jurisdiction* is required to ascertain whether the suit is within the *pecuniary jurisdiction* of the Court.⁵ The plaintiff should give the *true value* at which the subject-matter of the suit ought to be valued, the valuation should not be arbitrary or fanciful.⁶

The mere under-valuation or over-valuation cannot affect the decree, unless the wrong valuation has prejudicially affected the merits of the case.⁷

Representative Character.—Where the plaintiff sues in a representative character, he should make a statement to that effect

1. Section 20, Exp. II, C. P. C.

2. ('55) (S) A. I. R. 1955 Bhopal 6 (6).

3. The Court-Fees Act (VII of 1870) S. 17.

4. *Mokhalal v. Ramdheyani*, 44 I. C. 143.

5. ('18) A. I. R. 1918 Mad. 998 (1002) ; 40 Mad. 1 (F. B.).

6. ('51) A. I. R. 1951 Nag. 218 (223).

7. ('33) A. I. R. 1933 All. 249 (252) ; 55 All. 315 (F. B.).

in the first paragraph of the plaint, *e. g.*, "The plaintiff is the manager of a joint Hindu Family composed of himself and his two sons and sues as such" or "The plaintiff is the Official Reciever of the property of A B Company which have been adjudicated insolvent by the High Court Bombay under an order, dated. and sues as such." Further if the plaintiff is required by law to take any preliminary steps before he is entitled to file suit in representative capacity, he must also mention that he has taken those steps. For instance in a suit under section 92 of the Code of Civil Procedure, the plaintiff should give that he has obtained the consent in writing of the Advocate General. Likewise where the law,¹ requires that probate or letters of administration should be procured in respect of the estate of a deceased person, the plaintiff should give that he has procured a probate, or that he is the executor under the will, or if the person died intestate, that he has procured letters of administration in respect of the estate of the deceased.

But where the law requires any preliminary steps, *e. g.*, a succession certificate, to be taken before the passing of the decree, it is not at all necessary that the succession certificate should be procured before the institution of the suit, it is sufficient to procure and produce it any time before the Court is called up to pass a decree.² The plaintiff, therefore, need not allege in the plaint that he has procured the succession certificate because procuring the certificate is not necessary to entitle the plaintiff to institute the suit.

The following are some examples of the suits filed in representative capacity :

- (i) Suit by one or more persons on behalf of a community or persons having the same interest.³
- (ii) Suit by executor or administrator representing the estate of a deceased person.
- (iii) Suit under section 92 of C. P. C. by persons having an interest in the trust.
- (iv) Suit by a Manager of a Joint Hindu Family.
- (v) Suit by a Shebait on behalf of the idol.⁴
- (vi) Suit concerning trust property where the contest is between beneficiaries and third persons.⁵

1. Section 212, Indian Succession Act (XXXIX of 1925).

2. *Kalian Singh v. Ram Charan*, 18 A. 34.

3. Order 1, Rule 8, C. P. C.

4. ('25) A. I. R. 1925 Nag. 183 (184).

5. Order 31, C. P. C.

(vii) Suit on behalf of a partnership in the name of the firm.¹

The Court has no jurisdiction to settle a right when there has been no proper representation of the interests in litigation.²

The rule applies to the *institution* of suits only; it does not prohibit the *continuing* of a suit already instituted by the legal representative of a plaintiff dying during the pendency of the suit, provided the representative capacity is established before the Court is called upon to pass a decree.³

Limitation.—Where the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaintiff should show the ground⁴ upon which exemption from such law is claimed.⁵ Where the suit appears from the statement in the plaint to be barred by limitation and the ground of exemption from limitation is not given in the plaint the court must reject the plaint under rule 11 (d), Order 7 of the C.P.C. The court will not allow the plaintiff to show the ground of exemption at the trial by putting in evidence any documents such as acknowledgment of liability.⁶ If the claim is not *prima facie* barred by the law of limitation, the plaintiff should not allege additional facts bringing the case within an exception. Further it is not necessary that the ground of exemption should be *specifically* given.⁷ Thus where it is apparent on the face of the record that the plaintiff is minor the ground of exemption under section 18 of the Indian Limitation Act need not be *specifically* pleaded.⁸ Likewise where the period of limitation has expired during holidays and the suit is brought on the day the court re-opens, the fact that the ground of exemption under section 4 of the Indian Limitation Act was not *specifically* given in the plaint is basis for dismissing the suit, inasmuch as the court is bound to take judicial notice of the holidays.⁹ On the same principle it has been ruled that where a plaint is returned for presenting to the proper court, the endorsements on the plaint is sufficient to attract the application of section 14 of the Indian Limitation Act, the ground of exemption need not be *specifically*

1. Order 30, C. P. C.

2. ('18) A. I. R. 1918 Cal. 437 (488) (D.B.).

3. ('92) 16 Bom. 519 (521).

4. Sections 6 to 20 of the Indian Limitation Act recite the cases in which exemption from the law of limitation can be claimed.

5. Order VII, Rule 6, C. P. C.

6. ('55) A. I. R. 1955 (Ajmer) 1 (1)

7. ('55) A. I. R. 1955 Raj. 188 (192).

8. ('09) 2 Ind. Cas. 77 (78) (D. B.) (Cal.).

9. ('20) A. I. R. 1920 Nag, 200 (202).

given in the plaint.¹ All that the rule says is that where the plaint is presented after the expiry of the period of limitation the plaint should contain the ground of exemption from limitation. Once this is done, the plaintiff may rely upon a new ground of exemption at the trial.

This rule is applicable only to cases where the suit is time barred *prima facie*.² A plaintiff, therefore, is not debarred from relying upon a ground of exemption from limitation if on the facts found, the plaintiff's claim appears to be barred.³ The plaintiff has to allege that his cause of action arose within the period of limitation.⁴

(2) Substantial Portion.—The substantial portion of the plaint should embody a statement of all facts constituting the cause of action⁵ with such facts as are necessary for establishing the plaintiff's case. As to what facts constituting the cause of action, should be given, see topic 'material facts' in Chapter I.⁶ What particulars of a fact should be given, see Chapter II titled 'Particulars'. Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds they should be stated as far as may be separately and distinctly.⁷ For instance in a suit on two bonds, the particulars of each bond with an account of money due should be separately stated.

One should be very careful in stating the facts constituting the cause of action for it is the cause of action which decides a plaintiff's case. If the facts are so worded that they do not disclose a cause of action, the plaint should be rejected by the Court.⁸ When one entertains doubt whether a certain fact is essential or not it is always advisable to give it rather than to omit it.⁹

As a general rule, the plaintiff's right or title which has been abridged should be alleged first and then the fact of abridgement. For instance in a *suit on a contract*, the contract should be given first, secondly its breach and in the last the damages resulting from

1. ('56) A. I. R. 1956, Mach. B. 97 (97) (D. B.).

2. ('14) A. I. R. 1914 Lah. 408 (410); 1914 Punj. R. E. No. 70 (D. B.).

3. ('19) A. I. R. 1919 All. 227 (228) (D. B.).

4. ('28) A. I. R. 1928 Lah. 763 (764).

5. O. 7, R. I. (e) : C. P. C.

6. It may be pointed out that what facts are essential to constitute a particular claim depends upon the claim itself.

7. O. 7, R. 8, C. P. C.

8. O. 7, Rule 11 (a), C. P. C.

9. Brook.

the breach of contract. The contract which was in force at the time of the breach need only be given and not as originally entered into between the parties. Where there are several covenants, some of which are broken and some not, the former only need be alleged in the plaint. The breach of the contract should be stated in the terms and language of the contract unless the terms are too general so as to convey no idea of the breach. Where the contract is to do things more than one, the plaint should show that the defendant has done none of them or if the defendant has done any of them, it should be specified distinctly. The *special damages* should also be shown distinctly.

In cases of *tort* the right violated need not be alleged unless it is peculiar to the plaintiff. The wrong alone should be shown with the special damages if any. But where some special right is claimed by the plaintiff the right must be alleged. For instance in *tort* of slander, libel, assault or malicious prosecution, only wrong need be pleaded, the plaintiff should not allege the right because the right is enjoyed by every citizen and not by the plaintiff alone. But in *tort* of obstruction to easement or infringement of copy right, the right should be pleaded before the obstruction or infringement is complained of. If a *tort* is actionable only if committed in a certain manner *e.g.*, maliciously or negligently, the manner should also be alleged.

In certain cases, the plaintiff's right alone gives rise to the cause of action. In such cases, the plaintiff's right only need be pleaded. Infringement of plaintiff's right need not be shown.¹

PART III—RELIEF

The last but not the least important part of the plaint is the relief prayed for by the plaintiff in the suit. Every plaint should state specifically the relief which the plaintiff claims either singly or in the alternative² (*e.g.*, where the plaintiff claims specific performance of a contract, or in the alternative, cancellation of the contract and damages). Where the plaintiff seeks relief in respect of several distinct claims or causes of action founded upon separate and distinct grounds, they should be stated as far as may be separately and distinctly.³ The reliefs which a plaintiff in a suit may claim are recovery of debt, declaration of any right, specific performance, injunction, rendition of account, appointment of receiver, damages, recovery of movable property, possession of or declaration of title to immovable property. But whatever relief

1. Woodroffe and Ameer Ali. C. P. C. 678.

2. O. 7, R. 7, C. P. C.

3. O. 7, R. 8, C. P. C.

the plaintiff seeks, that must be embodied in clear terms in the plaint, for reliefs claimed in the plaint cannot be supplemented by any oral prayer nor can a court grant a man more than he claims.¹ Where the reliefs claimed are more than one, they should be worded distinctly and separately and should not be mixed together.

Law does not require that the plaintiff should claim relief for himself, for cases are not rare in which a plaintiff cannot ask for a decree in his favour. For example in the case of a trust where the trustee refuses to institute suit in respect of trust, the beneficiary may file the suit impleading the trustee as a defendant and praying for a decree in favour of the trustee against the principal defendant.²

The plaintiff must pray for the *whole claim* which he is entitled to make in respect of the cause of action unless relinquishment of any portion of the claim is necessary in order to bring the suit within the jurisdiction of any court. If the plaintiff intentionally relinquishes or omits any portion of his claim, he cannot afterwards sue in respect of the portion so relinquished or omitted. Further where the plaintiff is entitled to more than one relief in respect of the same cause of action, he must claim all, because if he omits except with the leave of the court to sue for all such reliefs, he cannot afterwards sue for any relief so omitted.³ A lets out a house to B at a yearly rent of Rs. 200. The rent for the whole of the years 1961, 1962, 1963 is due and unpaid. A sues in 1964 for the rent due for 1962. A cannot afterwards sue B for the rent due for 1961 or 1963, except where at the time of suing for rent due for 1962, A has obtained the permission of the court to sue only for the rent due for 1962. The permission must be expressly procured. Where the plaintiff omitted a relief and the court remarked in the judgment that the relief omitted could be preferred later on, it was held that the remark did not amount to permission within the meaning of Order 2, Rule 2, C. P. C.⁴ The only exception is the mortgage suit in which a suit can be instituted even after a personal decree has been passed by the court on the same mortgage bond.⁵ Such a suit is but necessary because if the plaintiff wants to sell the mortgage property in the execution of the decree, he cannot do so without instituting a suit for sale.⁶

1. *Buddu Lal v. Ram Sahai*, 138 I. C. 808 ; 9 O W.N. 523 ; 1932 (Oudh.) 244.

2. *Taun Man v. Che Som*, 1932 (P. C.) 146, 151.

3. O. 2, R. 2, C. P. C.

4. *Kishan Narain v. Nizamuddin*, 1937 O. W. N. 1146.

5. Order 34, Rule 14, C. P. C.

6. *Ibid.*

The plaintiff should pray only for *necessary* and *effectual* relief and not which is unnecessary or which will be implied in the other and principal relief granted in the suit. For example where a son files a suit to recover the property alienated by his father to a third person without legal necessity, the son should pray only for the possession of the property and not for the declaration that the sale by the father is without legal necessity and as such null and void. Similarly where a plaintiff files a suit for recovery of possession of property he should not pray for a declaration of his ownership, for a decree for possession of property implies a judicial recognition of the right of ownership.

Alternative Relief.—“A person may rely upon one act of facts, if he can succeed in proving them, and he may rely upon another set of facts if he can succeed in proving them”.¹ A plaintiff may pray for *alternative reliefs*, provided the reliefs claimed are not inconsistent with one another.² Thus as plaintiff may in a suit on a negotiable instrument claim in the alternative a decree on the original consideration.³ Similarly in a tenancy suit the plaintiff may claim damages for the use and occupation in the alternative.⁴ So also a pre-emptor may assert that the vendor has no title to the part of the property and may offer to pre-empt the whole in the alternative, if the court finds that the vendor had title to sell the whole.⁵ Again a plaintiff seeking a declaration of title and recovery of possession may alternatively claim specific performance of the contract of lease and possession on that basis.⁶ However, in all such cases the plaintiff must *set out the facts* relied on by him in his alternative claim, distinctly and separately.⁷ He cannot be allowed to pick out such of the allegations as will support any alternative case put forward by him.⁸

A plaintiffs prayer for *alternative* relief cannot be transformed into one for additional relief.⁹ Where the plaintiff prays for one of the two alternative reliefs and is allowed one, he cannot in appeal, assert his right to the other relief.¹⁰

1. (1887) 35 Ch. D. 492 (499) *Owen v. Horgan* (Per Lindley, L. J.)

2. ('52) A. I. R. (1952) Nag. 115 (117) I. L. R. (1952)

3. ('18) A. I. R. (1918) P. C. 146 (146).

4. ('54) A. I. R. 1954 Assam 155 (157).

5. ('29) A. I. R. 1929 All. 398 (399) (D. B.).

6. ('52) A. I. R. 1952 Nag. 115 (117).

7. ('20) A. I. R. 1920 Cal. 93 (95) (D. B.).

8. 6 Ind. Cas. 472 (472) (D. B.).

9. ('24) A. I. R. 1924 All. 271 (272).

10. ('51) A. I. R. 1951 Mad. 282 (283) (D. B.).

General, or other Relief.—A prayer for general or other relief should not be made as the court will grant it to the same extent as if it had been asked for.¹ Where by mistake or inadvertence the plaintiff omits to claim the proper relief or if the relief claimed in the plaint is inadequate, the court has always power to grant the proper relief according to the circumstances of the case.² A court may award future interest on the sum found to be due to the plaintiff even if the latter has not claimed it. The court has discretion to grant even future mesne profits as part of a general relief to which a plaintiff is entitled.³ Similarly in a suit for exclusive possession, the court may pass a decree for joint possession.⁴ And so in a suit for sale of mortgaged property the court may pass a personal decree against the mortgagor defendant if the claim under the personal covenant is not barred by the law of limitation.⁵

Damages.—Damages are of two types—general damages and special damages. As a claim has to be valued for the purpose of jurisdiction, in every money suits it is necessary to state the precise amount claimed⁷; the plaintiff must claim a certain amount as general damages.

In cases where damages have actually resulted from the defendant's act (whether in breach of contract or in tort) the plaintiff should pray for the exact amount of such damages. He should give full particulars of every naya paisa he claims. The damages claimed by the plaintiff should have been the direct and immediate result of the defendant's act. The plaintiff should not claim damages more than he actually sustained. He can claim greater damages (extraordinary damages) provided he had given a notice to the other party that the breach of contract might result in such damages to him. In claiming damages for breach of contract the date of breach is the main factor, *i. e.* the plaintiff can claim damages only which he has sustained on the date of breach of contract. For instance in a contract of the supply of goods on a certain date if the goods are not supplied the plaintiff can claim the difference between the contract price and the market price on the day fixed for the delivery. If a certain amount so mentioned in the contract as payable in the event of breach, the plaintiff can claim damages to the extent of that amount without

1. Order 7, Rule 7, C. P. C.

2. ('56) A. I. R. 1956 All. 639 (640).

3. ('21) A. I. R. 1921 Lah. 125 (126).

4. ('53) A. I. R. 1953 Pat. 289 (290).

5. ('54) A. I. R. 1954 All. 191 (192).

6. ('25) A. I. R. 1925 P. C. 280 (288).

7. Order 7, Rule 2, C. P. C.

showing actual damage.¹ And so in the cases of tort the circumstances prevailing on the date of wrong have to be taken into consideration. Here too, the plaintiff should claim only those damages which are the direct and immediate result of the defendant's act for '*in jure non remota causa sed proxima spectatur.*' Further, except in torts of continuous wrongs, the plaintiff must also claim all damages which are bound to result in future from the tortious act because any claim for such subsequent damages would be barred by Order 2, rule 2, C. P. C.

Costs.—A plaintiff need not pray for costs of the suit as the court must award costs to the successful plaintiff, unless there is some other good cause for not awarding costs to him², which must always be recorded in writing.³

Future Interest.—In all money suits the plaintiff should claim interest from the date of the filing of the suit to that of the payment. Although the C. P. C. does not require the plaintiff to make any such claim nor prevents a court from decreeing such claim if not claimed,⁴ but it is always better to add a prayer for it. As to the rate of interest the plaintiff should not specify the rate of interest which he intends to claim as the question of rate of interest has been vested in the discretion of the court.⁵ No additional court-fee is to be paid on this portion of the plaint. Whether the interest claimed is allowed or disallowed, a separate suit therefor shall not lie.⁶

Mesne Profits.—A plaintiff may add claim for past *mesne profits i. e.* mesne profits accruing upto the date of the institution and for future *mesne profits* from the date of the institution of the suit upto the date of the delivery of possession. The valuation should be only with reference to the amount of the past mesne profits claimed.⁷ The future mesne profits should not be valued since it is not possible to give even an approximate statement of the amount.⁸

1. Section 74, Indian Contract Act.

2. *Bhubaneshwari v. Nilcoomul*, 12 I.A. 137.

3. Section 35, C. P. C.

4. *Yadaorao v. Ram Rao*, 1940 (Nag.) 240.

5. See section 34, (1) C. P. C.

6. Section 34 (2), C. P. C.

7. ('54) A. I. R. (1954) Tripura 8 (10).

8. ('53) A. I. R. 1953 Pat. 289 (290).

CHAPTER VIII

WRITTEN STATEMENT

A defendant's written defence or pleading is known as *written statement*. A written statement must be filed by the defendant *personally* or on his behalf by a *duly constituted agent*. The Code of Civil Procedure does not permit the filing of a written statement by a *third person* on behalf of the defendant.¹

The defendant may, and if so required by the Court, must, at or before the first hearing or within such time as the Court may permit, present a written statement of his defence.² In other words the defendant has a discretion to file a written statement unless the Court requires him to do so, and he can exercise that discretion at any time before the first hearing or upto some time fixed by the Court.³ Where, however, the defendant fails to file a written statement on the day fixed by the Court or at any day before the issues are settled, he will not be entitled, as of right, thereafter to file it,⁴ and the court may pronounce judgment against him, or make such order in relation to the suit as it thinks fit.⁵

As a written statement is a defendant's pleading as said above, it must conform to all the general principles of pleading discussed in the preceding Chapters. Here in this Chapter we shall discuss the special requirements of a written statement. A pleading presented by the plaintiff in reply to defendant's claim of set off or in reply to defendant's pleas is also called written statement. All rules of written statement apply to such statements of the plaintiff.⁶

Heading and title of written statement.—A written statement should bear the same heading and title as the plaint except where the defendants are more than one, only one party should be written in with "and another" or "and others" as the case may be. Thereafter it should be specified on whose behalf the written statement has been presented, *e. g.*, "written

1. ('31) A. I. R. 1931 All. 333 (335) : 53 All. 466 (D.B.).

2. Order VIII, Rule 1, C. P. C.

3. ('54) 1954-2 Mad. L. Jour. (Audh.) 251 (254).

4. ('49) A. I. R. 1949 Mad. 622 (622).

5. Order VIII, Rule 10, C. P. C.

6. Order VIII, Rule 6 (3) C. P. C.

statement on behalf of all the defendants” or “written statement on behalf of defendant no. 1” or “written statement on behalf of the plaintiff in reply to defendant’s claim for a set off” or “written statement on behalf of the plaintiff under the order of the Court dated.”

Body of the written statement.—In written statement the defendant should deal with every allegation made by the plaintiff in the plaint. A defendant may adopt any number of defences to the same cause of action. For instance in a suit on bond he may deny the execution of the bond, he may say that the claim is barred by the law of limitation and he may plead that the plaint does not disclose the cause of action. He may also take one form of defence to one part of the claim and another defence to another part of the claim.

Any ground of defence which has arisen after the institution of the suit or the presentation of a written statement claiming a set-off may be raised by the defendant or plaintiff, as the case may be, in his written statement.¹ A Court can take cognizance of events which happen during the pendency of the litigation as a defence to the action.² But where the defendant dies, his legal representative cannot take a defence which the defendant himself could not have taken.³

All the possible defences must be taken by the defendant. If he fails to raise any of them, he shall not be allowed to raise it at a later stage, particularly when it involves a question of fact.⁴

Where the defendant relies upon several distinct grounds of defence or set-off founded upon separate and distinct facts, they should be stated as far as may be, separately and distinctly.⁵

A defendant may have recourse to the following pleas :

- (1) Denials.
- (2) Dilatory Pleas.
- (3) Objections in point of law.
- (4) Special defences.
- (5) Set-off.

1. O. VIII, Rule 8, C. P. C.

2. ('28) A. I. R. 1928 Bom. 427 (430) : 52 Bom. 883 (D.B.).

3. *Sadho Singh v. Firm Kalin Singh*, 1944 (Lah.) 473.

4. *Bhabani v. Sarojini*, 1944 (Cal.) 106.

5. O. VIII, R. 7, C. P. C.

I. ADMISSIONS AND DENIALS.

The defendant should admit or deny all the material facts given in the plaint. He should not merely say "not known" or "the defendant has no knowledge of the facts alleged in para of..... the plaint", because such assertions do not amount to denial or non-admission as a party might admit even a fact of which he has no knowledge.¹ Every fact should be replied in the same serial order in which it has been alleged in the plaint. Where a certain fact alleged in the plaint is within the defendant's knowledge, the defendant should say 'admitted' or 'denied' and not 'not admitted'. For instance, where the plaintiff alleges that the defendant beat him, the defendant should deny it and not that 'not admitted'. But where the fact is not within the knowledge of the defendant, he should say 'not admitted' and not that the fact is denied by the defendant.

Denials must be specific.—It is not sufficient for a defendant to deny in his written statement generally the grounds alleged by the plaintiff, but the defendant must deal *specifically* with such allegations of fact of which he does not admit the truth.² A defendant may either admit or deny the allegations made in the plaint. If he denies any such allegations he must do so *clearly* and *explicitly*.³ The defendant should not merely say that "he does not admit a particular paragraph of the plaint" or "that a particular paragraph is not admitted". Nor the defendant should add an apology with denial *e. g.*, "The defendant does not admit the fact *because he has no knowledge of it.*" The defendant should take out the particular fact which he wants to deny and deny it as far as possible in the words of the plaint itself. For instance, "The defendant denies the allegation that he employed the plaintiff to serve in his factory" or "The defendant admits that he employed the plaintiff to serve in his factory alleged in para 2 of the plaint, but denies that the employment was for a period of four years." Facts, however, which are not essentials of the cause of action but which are introductory or explanatory of the essential facts, may be denied with reference to paragraphs, *e. g.*, "The defendant denies the allegations contained in paras 1, 3, and 5 of the plaint."

Where the written statement is presented on behalf of several defendants and all the defendants decide to deny a certain allegation, the denial should be in such like words—"Each of the defendants denies the sale of goods" or "the defendants deny

1. *Laxmi v. Ram Lal*, 1931 All. 423, 131, I. C., 414.

2. O. VIII, R. 3, C. P. C.

3. ('52) A. I. R. 1952 J. and K. 29 (30) : 11 J. & K. L. R. 75.

that they or either of them sold goods." The denial should not be like "the defendants deny that they sold goods" or "the defendants did not sell the goods", because it would be consistent with one of the defendants having sold the goods.

A compound allegation intended to be denied should be broken into separate parts and separate denial should be pleaded to each of them. For example if the allegation is that "the defendant borrowed plaintiff's cycle" and the defendant wants to deny both the allegations of having borrowed the cycle as well as of the cycle belonging to the plaintiff, the defendant should plead denial by saying—

(i) The defendant never borrowed the cycle.

(ii) The cycle is not the plaintiff's cycle.

A single denial—"The defendant denies that he borrowed plaintiff's cycle" would not be specific as it will be denial of only one allegation, *viz.*, "of having borrowed the cycle".

Consequences of non-specific denial.—Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant shall be deemed to be admitted.¹ In other words every allegation of fact in the plaint will be deemed to be admitted, if in the written statement it is neither specifically denied nor specifically stated to be not admitted.² Thus where in an ejectment suit the land from which it sought to eject a tenant was alleged to be 'old waste' under the Madras Estates Land Act, 1908, and this allegation was not traversed in the written statement, the defendant could not afterwards plead that the land was not old waste.³ A mere allegation that the defendant *does not admit any of the allegations* in the plaint except such as have been expressly admitted and that he puts the plaintiff to the proof of allegations not so admitted is not a sufficient denial within the meaning of this rule; every allegation so denied will be deemed to have been admitted.⁴

The rule that non-specific denial means indirect admission has no application where the defendant is a person subject to disability *e. g.*, a minor.⁵ But this exception is not concerned with the conduct of the suit. Thus, where at the time of framing

1. O. VIII, R. 5, C. P. C.

2. ('55) A. I. R. 1955 All. 573 (575) (D. B.).

3. ('19) A. I. R. 1919 (Mad.) 927 (927) : 42 Mad. 315 (D. B.).

4. ('55) A. I. R. 1955 Vindh. Pra. 24 (27).

5. ('23) A. I. R. 1923 Mad. 114 (115) (D. B.).

of issues or at the trial, the person representing a minor admits certain allegations of fact, the rule in no way affects such admission.¹

Denials must not be evasive.—Where a defendant denies an allegation of fact in the plaint, he must not do so *evasively*, but answer the point of substance.² The expression “point of substance” means the ‘real gist of and significance of the allegation traversed, as distinguished from comparatively immaterial talks’. Thus if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. *A* sues *B* for dissolution of partnership alleging that he entered into a partnership agreement with him to carry on a certain business. *B* in his written statement replies the allegation by saying that he entered into a partnership agreement as alleged, but the terms of the agreement between himself and the plaintiff were not definitely agreed upon as alleged. This is nothing but an *evasive* denial of the fact of partnership and was not permitted.³ Likewise where several circumstances are alleged in the plaint as forming details of certain transactions, the defendant should deny the several circumstances specifically and not as a whole using almost the precise language of the allegation, because the latter denial will as a rule be considered *evasive*.⁴ Thus if the plaintiff alleges that he has served the defendant as his hired servant from 20th June 1963 to 18th September 1963 in Meerut, it would be a bad traverse for the defendant to reply the allegation in his written statement by saying “the plaintiff did not serve the defendant as a hired servant from 20th June 1963 to 18th September 1963 at Meerut.” The defendant should say that the plaintiff never served him at all or else show how and he admits the plaintiff did serve him. He need not say any word about the place which is immaterial, or if he says any word he must add the words ‘or at any other place’ after the words ‘the plaintiff did not serve him at Meerut’. Expressions like “or at all”, “any other sum”, or “at any other place” should be used which render the denial more specific and clear. An averment in the written statement that the plaintiff is put to proof of the document being true is dubious and cannot be considered a specific denial of the execution of the document which alone can bring into operation the proviso to section 68 of the Indian Evidence Act.⁵ But where the plaintiff claiming title

1. (19) A. I. R. 1919 Mad. 114 (115) (D. B.).

2. O. VIII, R. 4, C. P. C.

3. (1876) 3 Ch. D. 637 (640, 641) : 45 L. J. Ch. 406 *Thorp v. Holdsworth*.

4. (21) A. I. R. 1924 Mad. 838 (839).

5. (55) 68 Mad. L. W. 417 (417).

under one *A* alleged that she died on September 28, 1906 and the defendant pleaded that he does not admit that *A* died on September 28, 1906, and that the suit was barred by the law of limitation, *held* that the denial was not *evasive* inasmuch as there is only one fact and that has been stated to be not admitted.¹

Where a denial is *evasive*, amendment may be made after obtaining leave under O. 6, R. 17² except where the defendant is found to have acted *mala fide*.³

II. DILATORY PLEAS

Pleas which merely delay the trial of a suit on merits *e.g.*, the suit is barred by section 10, C. P. C. or that the plaintiff is a minor and must sue through a next friend or that the defendant is a minor and cannot be sued without the appointment of a guardian or that the suit is bad for non-joinder or misjoinder of parties or of causes of action or that the plaintiff has not paid sufficient court-fee, are known as dilatory pleas in law. Such pleas should be taken in the written statement or by a separate application at the earliest possible opportunity, as some pleas such as that of misjoinder and non-joinder of parties unless taken at the earliest possible opportunity are deemed to have been waived.⁴ Further, these pleas should also be specific and definite and not in vague and indefinite terms. For example it is not sufficient for the defendant to say merely "that the suit is bad for non-joinder of parties." He should show who is the person who is necessary party to the suit, who should have been joined as a plaintiff or as a defendant. And so, where the plea is that the suit is barred by section 10, C. P. C., the defendant should not merely say that the suit is barred by section 10, C. P. C.; he should give full particulars of the previously instituted suit which is alleged to bar the hearing of the instant suit. The defendant should plead in some such way.

"The defendant has on 1st June 1963, previous to the institution of this suit has brought a suit against the plaintiff in the Court of City Munsif at Meerut (being Suit No. 206 of 1963) for the recovery of money, and the particular pro-note which is the basis of the claim in this suit, is also the basis of the previous suit and is therefore, directly and substantially in issue in that

1. ('24) A. I. R. 1924 Mad. 638 (639).

2. "The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties".

3. (1878) 10 Ch. D. 393 (396, 397), *Tildesby v. Harper*, (on appeal from (1878) 7 Ch. D. 403).

4. O. 1, R. 13, C. P. C.

case. As that suit is still pending, the court should not proceed with the trial of this suit as barred by section 10, C. P. C."

III. OBJECTIONS IN POINT OF LAW

Objection in point of law means refuting plaintiff's claim on legal grounds. Here the defendant says that 'even if the allegations of fact be supposed to be correct, still the legal inference which the plaintiff claims to draw in his favour from those facts is not tenable'. For instance where the plaintiff claims some property as the sister of the deceased and the defendant raises objection that under the personal law to which the parties are subject, a sister is not entitled to succeed to her brother, the latter's objection is objection in point of law. If the plaintiff's case arises out of the correctness or otherwise of the facts alleged by him, that is no case for objection in point of law. Objections in point of law should raise a point of substance and should be worded in definite and unambiguous language. Examples of objections in point of law are—"The defendant objects that the damages claimed by the plaintiff are too remote" or "that the act which has caused injury to the plaintiff was an act of God" or "that the special damage claimed by the plaintiff is not sufficient in point of law to sustain this suit" or "that the plaintiff has assassinated A and as such he is not entitled to succeed A's property" or that "the plaint discloses no cause of action for this claim" etc. etc. Ordinarily objections in point of law are decided at the time of trial. But if the Court is of opinion that the case or any part thereof can be disposed of on the decision of any such objections, the court should try that objection first and for that purpose may, if it thinks fit, postpone the settlement of other issues until after the objections have been determined.¹

IV. SPECIAL DEFENCE

A special defence justifies or excuses the defendant's act complained of and the burden of establishing facts on which such special defence is based always lies on the defendant. The defendant accepts the facts alleged by the plaintiff, but refutes the facts as a whole on some special ground. For example, in the case of a contract, the defendant may admit the contract as alleged by the plaintiff but may plead defence that the contract is marred by coercion or fraud or that the contract has been subsequently rescinded. All matters justifying or excusing defendant's act complained of must be alleged in specific and clear terms. Order 8, Rule 2, C. P. C. lays down, "The defendant must raise by his pleading all matters which show the *suit not to be maintainable*, or that the *transaction is either void or voidable* in point of law and all such

1, O. 14, R. 2,

grounds of defence, as is not raised, would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the plaint, as for instance, *fraud, limitation, release, payment, performance or facts showing illegality.*" The defendant should pen in his defence all points, either of fact or of law which he desires to take.¹ If he omits to do so he will not be allowed to raise a new plea depending upon evidence for its determination, for the first time in appeal.²

Now let us separately take special defences which are commonly adopted.

Limitation.—The defence of limitation is complete defence in a suit and should always be pleaded where available. Where the plea of limitation is available in respect of a portion of the case, that portion should be clearly worded, *e.g.*, "so much of the claim which relates to recovery of rent is barred". At such places the defence should not be pleaded in general terms that "the suit is barred by etc.," or that "the first portion of the claim is barred."

The defence of limitation should be adopted in the following form: "The suit is barred by article—, or article—, of the second schedule to the Limitation Act, 1908."³ When the defendant fails to decide the exact article applicable, he may plead more than one article in the alternative. The plea of limitation cannot be said to be indefinite even if no article is quoted at all.⁴ Where the plea of limitation is taken under some special Act, the Act and the section of the Act should always be stated.

At some places a brief narration of facts is necessary to plead the defence of limitation, *e.g.*, "the defendant had refuted the plaintiff's title so far back as in 1940, hence the suit for declaration is barred by article 120 etc." or "the defendant has been in adverse possession of the property for over 12 years before the suit and as such the suit is barred by article 144 etc." or "the plaintiff has never been in possession of the land at any time within 12 years before the suit and, therefore, the suit is barred by article 142, etc." At such places facts in brief along with the limitation should be given.

Jurisdiction.—The plea of jurisdiction, truly speaking, is a dilatory plea because if the plea is allowed, the plaintiff's suit is not dismissed but the plaint is returned for presenting to the

1. ('55) I. L. R. (1955) Cut. 45 (50).

2. ('54) A. I. R. 1954 S. C. (263), (266).

3. Appendix A, Sch. 1, C. P. C. General Defences.

4. *Jnanendra v. Umesh*, 26 C. W. N. 584, A. I. R. 1922, Cal. 544.

proper Court. The plea of jurisdiction should be taken in clear and definite terms giving an exact idea about the nature of the objection. It is not proper to plead merely "the court has no jurisdiction to try the suit." Facts which engender objection to jurisdiction should be incorporated in the objection. For instance, "The contract was not made at Meerut but at Delhi, hence this Court has no jurisdiction", or "The valuation of the subject-matter of the suit is above Rs. 5000/-, hence this Court has no jurisdiction to try the suit", or "The defendant denies that he resides within the jurisdiction of this Court, hence this Court has no jurisdiction to try the suit".

Accord and satisfaction.—Where the defendant gives or does something for the plaintiff and the latter agrees to accept the thing done or given as discharge of a certain claim, the plea is known the plea of "accord and satisfaction". The agreement is the accord and the thing done or given is satisfaction. Both "accord" and "satisfaction" should be pleaded simultaneously; accord or satisfaction should not be pleaded singly.¹ Accord and satisfaction may be by doing a work or by delivering any cattle or thing in lieu of the plaintiff's claim.

Payment.—The time and mode of pleaded payment should be given in the plea. Payments for which credit has been given by the plaintiff himself need not be alleged. Payment should be pleaded in some such form. "The defendant pleads a payment of Rs. 200/- to the plaintiff on July 10, 1963 towards the bond in suit" or "In addition to the payments credited by the plaintiff the defendant pleads several payments to the tune of Rs. 500/-, the details of which are—

1. Paid in cash on 1st April 1963, Rs. 100/-.
2. Paid in cash on 1st June 1963, Rs. 200/-.
3. Paid by price of a cycle sold by the defendant to the plaintiff on 3rd September, 1963—Rs. 300/-."

Estoppel.—Where a person by his words or conduct wilfully causes another to believe the existence of a certain state of things and induces him to act on that belief, so as to alter his own previous position, the law of estoppel precludes the former from averring against the latter a different state of things as existing at the same time. Estoppel may, therefore, be defined 'as a disability whereby a party is precluded from alleging or proving in legal proceedings that a fact is otherwise than it has been made to appear by the matter giving rise to the disability'. Section 115 of the Indian Evidence Act defining the law of estoppel lays down "When

1. *Karam Chand v. Dunlop Rubber Co.*, 103, I. C. 85.

one person has by his *declaration, act or omission* intentionally caused or permitted another person to believe a thing to be true, and to act upon such belief, neither he nor his representative shall be allowed to deny the truth of that thing in any suit or proceeding between himself and such person or his representative". The particular act, omission, conduct or deed which is alleged to constitute estoppel should be specifically pleaded.¹ It is not proper to plead merely that, "The suit is barred by the principle of estoppel" or "the suit is barred by section 115 of the Indian Evidence Act". The proper form is: "The plaintiff is estopped from denying the defendant's title to the land because on 2nd March 1962, he negotiated the sale of it by one Mr. Ghansyam Dass to the defendant and thus caused the defendant to believe that it belonged to the said Ghansyam Dass and upon that faith the defendant has purchased it from the said Ghansyam Dass for Rs. 3000/-".

Res-judicata.—*Res-judicata* means a thing already decided. The plea of *res-judicata* should be specifically alleged because it should not be heard unless it is pleaded. If not pleaded it shall be deemed to have been waived.² It is not sufficient to allege merely "The suit is barred by section 11 of C. P. C." or "The suit is barred by *res-judicata*". The full particulars constituting *res-judicata* should be given. For example: "The plaintiff had instituted a suit for the same relief as is claimed in the present suit against Shyam Behari the deceased, the father of the defendant, through whom the defendant claims the house in dispute. The suit (being No. 163 of 1960) was decided against the plaintiff on August 13, 1961 by the City Munsif Saharanpur. The present suit is, therefore, barred by section 11, C. P. C." If the copies of the judgments or the pleadings of the previous suit are not filed, it has been held that it is sufficient to state what were the issues in the case, what was the decision on them and how the decision operates as *res-judicata*.³

Acquiescence.—Acquiescence means inaction (silence) during the performance of an act. Mere silence, however, does not amount to acquiescence. Acquiescence to be a valid defence must amount to fraud and the following essentials should be present to constitute such fraud: (i) the party alleging acquiescence must have made a mistake as to his legal rights, (ii) he must have spent money or must have done some act on the faith of such belief, (iii) the party claiming legal rights must be aware of his legal right and

1. *Kanhailal v. Bhaiyalal*, 16 N. L. J. 248.

2. *Sansar Chand v. Dinanath*, 155, I. C. 571.

3. *Kailash Nath v. Chandrabhan*, 1935 A. W. R. 500, 156 I. C. 970.

such legal right must be inconsistent with the legal right claimed by the party pleading acquiescence, (iv) he must also be aware of the party's (the party pleading acquiescence) mistaken belief of his right, (v) the plaintiff must have encouraged the defendant in the expenditure of his money or in some other act which he has done either directly or by abstaining from asserting his legal right".¹ The defendant should not merely plead that "the plaintiff's claim is barred by the principle of acquiescence." He should rather give full particulars establishing "acquiescence" in some such way: "The defendant dug the well on the vacant land in the presence of the plaintiff in the honest belief that the land has been allotted to him on the partition. The plaintiff knew the fact that the land has been allotted to him and that the defendant was acting under the said honest belief, but did not stop him. The plaintiff's claim, therefore, of having the well filled up now is barred by the principle of acquiescence."

Illegality.—Where the illegality of a contract is pleaded, the defendant should not merely say that the contract is legally void. But he should set out all the facts which make the contract illegal. For example that the contract is a wagering contract or that the contract is for illegal consideration or that the contract is without consideration. But where the illegality of the contract flows from the facts alleged in the plaint, they should not be repeated in the written statement. The plea of illegality should be raised in the written statement because the plea cannot be raised for the first time in arguments.²

Justification.—The defence of justification is adopted in suits for libel or malicious prosecution. Where the defence is adopted, full particulars establishing justification should be given. The justification pleaded must be of the exact charge, and definite and unambiguous language should be used. Where a specific charge is intended to be justified by a plea of truth, it is enough merely to say so, but where the charge is general, instances of particulars must be quoted to justify the charge.

V. SET-OFF

Set-off means the reciprocal acquittal of debts. The doctrine of set-off may be defined as "the extinction of debts of which two persons are reciprocally debtors to one another, by the credits of which they are reciprocally creditors to one another."³ A plea of

1. *Jai Narayan v. Jafar*, 24 A. L. J. 355; *Budh Singh v. Parbati*, 4 A. L. J. 556; *Willmott v. Barber*, (1880) 15 Ch. Div. 96; *Mahal v. Rana*, 1938 (Lah.) 88, 177 I. C. 198; *Narayan v. Sarkaram*, 168 I. C. 842, 1937 (Mad.).

2. ('25) A. I. R. 1925 Lah. 345 (346) : 6 Lah. 442.

3. ('56) A. I. R. 1956 Pat. 199 (200).

set-off differs from a plea of payment in this respect that while a plea of payment refers to a satisfaction or extinguishment of a debt effected *prior to the raising of the defence* of payment, a plea of set-off *prays for* a satisfaction or extinguishment thereof commencing in the future after the date of the plea.¹

Order 8, Rule 6, C. P. C. provides for set-off and lays down, "Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both the parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards, unless permitted by the Court present a written statement containing the particulars of the debt to be set-off". In order to entitle a defendant to claim a set-off, the following conditions must exist—

- (i) The suit must be for *recovery of money*.
- (ii) The defendant's claim must be for *an ascertained* sum of money.
- (iii) The money must be *legally recoverable*.
- (iv) Both the parties must fill the *same character* as they fill in the plaintiff's suit.
- (v) The sum claimed by way of set-off *must not exceed the pecuniary limits* of the jurisdiction of the Court.

(i) Suit for recovery of money.—For invoking the plea of set-off it is necessary that the suit should have been for the recovery of money. No matter what the title may be, no matter whether such title arises *ex delicto* or *ex contractu*, so long as the *relief sought is to recover money*, it is a suit for money and a set-off can be pleaded.² A suit on a negotiable instrument is a suit for money.³ But a suit merely for dissolution of partnership or for an account is not a suit for money,⁴ except where there is also a prayer for the payment of such balance as might be found due to the plaintiff where the suit would be one for the payment of money.⁵ A suit for redemption pure and simple,⁶ and a suit for the ejectment of the tenant on the ground that he had not paid the rent

1. ('54) A. I. R. 1954 Trav.-Co. 243 (245) : I. L. R. (1953) Trav.-Co. 461.

2. ('88) 10 All. 587 (598, 599).

3. ('31) A. I. R. 1931 Nag. 12 (13). See also illustration (d) to Rule 6, Order 8, C. P. C.

4. ('86) 13 Cal 124. (135).

5. ('88) 10 All. 587 (593) (D. B.),

6. ('52) A. I. R. 1952 Pat. 73 (75, 76).

for certain months without adding any claim for recovery of a sum of money as arrears,¹ are not suits for recovery of money.

(ii) **An ascertained sum of money.**—An ascertained sum of money is the money of which the amount is fixed and known; it does not necessarily mean a sum *admitted* by the other side or *decreed* by the Court; the words are used in contradistinction to unliquidated damages.² The mere fact that an arithmetical calculation is necessary to arrive at the total sum cannot render such total an ascertained sum of money.³ Unascertained sums, however, may be set-off by the *consent of the parties* when they compromise the suit.⁴

In cases of mutual credits and debits and in cases where cross-demands arise out of the same transaction, or are so connected as to make it inequitable that the plaintiff should recover and the defendant driven to a cross-suit, courts of Equity in England have allowed a plea of *set-off* even though the amount may be *unascertained*.⁵ This set-off is known as *equitable set-off* and has been recognised in India also. The equitable set-off differs from the legal set-off in many respects. Firstly the defence of equitable set-off cannot be claimed as a *matter of right*,⁶ while in legal set-off the court is *bound* to entertain and adjudicate upon the plea when raised.⁷

Secondly in a legal set-off the amount claimed is an ascertained sum of money, while in an equitable set-off it is not necessary that the sum claimed should be an ascertained sum of money.

Lastly in an equitable set-off the cross-demands should have arisen out of the *same transaction*; a plea of equitable set-off will not be allowed where it relates to a different transaction.⁸ On the other hand in a legal set-off cross-demands may or may not arise out of the same transaction.

(iii) **Legally recoverable from the plaintiff.**—The expression legally recoverable does not connote the ability of the debtor to pay the demand in full. A sum is said to be legally recoverable

1. ('56) A. I. R. 1956 Punj. 190 (192).

2. ('53) A. I. R. 1953 Hyd. 186 (187); I. L. R. (1952) Hyd. 1041 (D. B.).

3. ('04) 2 Low-Bur-Rul 186 (187, 189) (F.B.).

4. ('71) Suth. W. R. 113 (115) (F. B.) (Obiter).

5. Chitale and Rao : A. I. R. Commentaries C. P. C. 6th Edition P. 2399.

6. ('56) A. I. R. 1956 Pat. 199 (200).

7. *Ibid.*

8. ('52) A. I. R. 1952 S. C. 201 (201).

where the plaintiff is bound by law to pay it or where he is liable to the defendant in respect of that debt. A time barred debt is not legally recoverable and as such the defendant's claim must not have been barred by the law of limitation on the date of the suit.¹

(iv) Both the parties must fill the same character.—To enable a defendant to raise a set-off it is necessary that both the parties must fill the same character as they fill in the plaintiff's suit.² As such an amount due to the defendant in the capacity of a *manager* cannot be set-off against a personal claim against him.³

(v) Not exceeding the pecuniary limits of the jurisdiction of the Court.—The sum claimed by way of set-off must be within the *pecuniary jurisdiction* of the Court. Where both the amount of the claim and the value of the set-off are each within the jurisdiction of the Court, it is immaterial that the *combined amount* of the two claims is beyond its jurisdiction.⁴ Further the valuation of the suit for the purpose of jurisdiction to be considered is the *entire* sum pleaded and not the difference between the plaintiff's claim and the defendant's claim.⁵ But where the plaintiff in his plaint admits any portion of the defendant's claim that portion must be deducted in determining the jurisdiction of the Court to try the suit.⁶ Where the amount claimed by way of set-off exceeds the pecuniary jurisdiction of the Court, the defendant can reduce his claim and bring it within the jurisdiction of the Court. Where he so reduces his claim, he is barred by O. 2, R. 2, C. P. C. from claiming the balance afterwards by a separate suit.⁷

The defendant must specifically raise a set-off in the written statement and no claim by way of set-off can be entertained unless the defendant files a written statement.⁸ A claim of set-off should be made after the defence to the plaintiff's claim and should set out 'all the particulars of set-off, the amount claimed, the cause of action for the amount, the person to whom and by whom it is due and the date on which it became due'. After this has been done the defendant must end the claim of set-off with the words: "and the defendant claims to set-off that sum

1. ('56) A. I. R. 1956 Trav. Co. 239 (240) (D.B.).

2. ('49) A.I.R. 1949, Nag. 193 (194). See also illustrations (a) and (b) to Order 8, Rule 6, C. P. C.

3. ('27) A. I. R. 1927 Lah. 228 (229) : 8 Lah. 105 (D.B.).

4. ('89) 1889 Pun. Re. No. 69, Page 220 (221).

5. ('25) A. I. R. 1925, Rang. 65 (66, 67).

6. *Ibid.*

7. ('42) A. I. R. 1942, Mad. 580 (581) : I. L. R. (1942) Mad. 836 (D.B.).

8. *Mrs. C. Simon v. Arogiasami*, 25 I. C. 361, 16 M. L. J. 122.

against the plaintiff's claim in this suit". If necessary, the defendant may also add, "and prays for judgment in his favour for the amount of his claim which may be found to be in excess of the plaintiff's claim."¹

The defendant must pay court-fee on the amount claimed by way of set-off. The Court-fee should be paid on the whole amount claimed by the defendant and not only on the amount claimed in excess of the plaintiff's claim.² If no Court-fee is paid, the Court should not demand it, but should refuse to entertain the claim as it is not a case of insufficient Court-fee but of no Court-fee.³

Effect of not claiming set-off.—A defendant is not *bound* to raise a set-off in answer to the suit against him and his omission to do so does not preclude him from bringing a separate suit in respect of it.⁴ But if he does raise up such claim, he must do so in respect of the *entire* amount due. He cannot claim a set-off in respect of a portion only, and subsequently sue for the balance.⁵ The rule is, however, qualified by one exception. "In all actions for goods sold and delivered with a warranty, or for work and labour, as well as in actions for goods agreed to be supplied according to a contract, it is competent for the defendant to show how much less the subject-matter of the action was worth by reason of the breach of the contract; and to the extent that he obtains or is capable of obtaining an abatement of the price on that account, *he must be considered as having received satisfaction for the breach of contract*, and he is precluded from recovering in another action to that extent, *but no more*".⁶

1. P. C. Mogha : The Law of Pleadings, Ninth Ed. Page 280.

2. *Jugal Kishore v. Bankey Bihari*, 1935 (Pat.), 110.

3. *Muthu Erulappa v. Vunuku*, 36 I. C. 957.

4. ('53) A. I. R. 1953, Him. Pra. 11 (15).

5. *Ibid.*

6. (1841) 8 M. and W. 858 (871, 872) *Mondel v. Steel*.

CHAPTER IX

MISCELLANEOUS APPLICATIONS

Besides a plaint and a written statement the litigants during the course of litigation move certain applications such as application under section 95 C. P. C. for compensation for arrest or attachment before judgment on insufficient grounds, application under section 114 C. P. C. for review of judgment, and application for restitution under section 144 C. P. C. Such applications should be drafted with the same care as the pleadings. Like pleadings they should be both precise as well as brief and devoid of irrelevant matters.

The grounds on which application is moved should to the extent possible be stated in the words of the law under which the application is filed. For example in an application for setting aside an *ex parte* decree against the defendant, the defendant should say that "the summons was not duly served" or that "the defendant was prevented by any sufficient cause from appearing when the suit was called on for the hearing". And so, in an application for review of judgment on the ground of discovery of a new and important evidence, the applicant should give that the evidence, "after the exercise of due diligence was not within his knowledge or could not have been produced by him at the time when the decree was passed". It is not advisable to employ a language different from that of the law under which the application is made.

Like a plaint every application should have a heading and a title. The name of the Court should be given at the top and thereafter should follow the name of the applicant and the opposite party. Where the application is moved in connection with a suit or proceeding, the number and the cause-title of that suit or proceeding alone should be given after the name of the Court.

The body of the application should be either in the form of a petition—

"The humble petition of.....defendant in the above mentioned suit,

respectfully submits as follows——"

Or it may be written like a plaint—

"Application for restitution under section 144 C. P. C. by...
.....the defendant in the above-mentioned suit.

The applicant humbly begs to submit as follows."

It is not absolutely necessary that the law under which the application is filed should be given.

Except where the application is made in connection with a suit or proceeding, the valuation of the application should also be given. This is necessary for taxing pleader's fee and for determining the court-fee or process fee.

Like pleadings facts in the application should be stated in brief and concise language. The application should be divided into paragraphs and one paragraph as far as possible should narrate one allegation except where two or more allegations are so connected with each other that it is better to give them in one paragraph. With some applications affidavits are filed and if in such cases the facts are too long things need not be narrated in the application. They should only be narrated in the affidavit and in such cases the application should be worded in some such form :

"For the reasons shown in the annexed affidavit, the applicant prays that, etc."

The application should end with a prayer. Where the application is in the form of petition, the prayer should be in the following form—"The petitioner, therefore, prays etc." Where the application is modelled on the lines of a plaint, the prayer, should be in the following form : "The applicant, therefore prays etc."

After prayer, should follow the signature of the applicant or his pleader.

Where law requires verification, the application should also be verified.

CHAPTER X

AFFIDAVITS

An affidavit is a declaration as to facts made in writing and sworn before a person having authority to administer an oath.¹ The officer authorised must be on *duty* at the time when the oath is administered.²

Use of Affidavits.—Affidavits can be used for evidence in the following cases—

(i) When the court at any time either of its own motion or on the application of any party orders that any fact may be proved by affidavits.³

(ii) When the court at any time for sufficient reason orders that the affidavit of any witness may be read at the hearing unless either party *bona fide* desires to cross-examine the witness and the witness can be produced.⁴

Rules of Affidavits.—In the absence of any statutory rules, the following rules should be observed when drafting an affidavit:

(1) Every affidavit should be drawn up in the first person.⁵

(2) Affidavit should be titled, *In the court of—at—(naming such court)*. If the affidavit be in support of, or in opposition to, an application respecting any case in the court, it should also be titled in such case. If there be no such case, it should be titled *In the matter of the petition of*.

(3) Affidavit should be divided into paragraphs, and every paragraph should be numbered consecutively and as nearly as may be, should be confined to a distinct portion of the subject.

(4) Every person making an affidavit should be described therein in such manner as shall serve to identify him clearly; and where necessary for this purpose, it should contain the full name, the name of his father, his rank or degree in life, his profession, calling, occupation or trade, and the true place of his residence.

1. ('53) A. I. R. 1953 Nag. 169 (171) : I. L. R. (1953) Nag. 314 (D. B.).

2. ('10) 4 Sind L. R. 88 (92) : 8 Ind. Cas. 897 (898).

3. Sec. 30, C. P. C.

4. O. 19, R. 1, C. P. C.

5. Madras Civil Rules of Practice Rules 37, 38 and Calcutta Civil Rules and Orders. R. 35.

(5) Unless it is otherwise provided, an affidavit may be made by any person having cognizance of the facts deposed to. Two or more persons may join in an affidavit; each shall depose separately to those facts which are within his own knowledge, and such facts should be stated in separate paragraphs.

(6) When the declarant in any affidavit speaks to any fact within his own knowledge, he must do so directly and positively, using the words, "I affirm" or "I make oath and say".

(7) Except in *interlocutory proceedings*, affidavit should strictly be confined to such facts as the declarant is able of his own knowledge to prove. In *interlocutory proceedings* when the particular fact is not within the declarant's own knowledge, but is stated from information obtained from others, the declarant should use the expression "I am informed," and if such be the case, "and verily believe it to be true" and should state the name and address of, and sufficiently describe for the purposes of identification, the person or persons from whom the received such information. When the application or the opposition thereto, rests on facts disclosed in documents or copies of documents produced from any court of justice or other source, the declarant should state what is the source from which they were produced and his information and belief as to the truth of the facts disclosed in such documents.

(8) When any place is referred to in an affidavit, it should be correctly described. When in an affidavit any person is referred to, such person, the correct name and address of such person, and such further description as may be sufficient for the purpose of identification of such person, should be given in the affidavit.

(9) Every person making an affidavit for use in a civil court should, if not personally known to the person before whom an affidavit is made, be identified to that person by someone known to him, and the person before whom the affidavit is made should state at the foot of the affidavit the name, address and description of him by whom the identification was made as well as the time and place of such identification. Such identification may be made by a person:

(a) personally acquainted with the person to be identified, or

(b) satisfied, from papers in that person's possession or otherwise of his identity.

In case (b) the person so identifying should sign on the affidavit a declaration in the following form, after there has been affixed to such declaration in his presence the thumb impression of the person so identified :—

FORM

I (name, address and description) declare that the person verifying this petition (or making this affidavit) and alleging himself to be *A. B.* has satisfied me (here state by what means, *e.g.*, from papers in his possession or otherwise) that he is *A. B.*

(10) If it be found necessary to correct any clerical error in any affidavit, such correction should be made in the presence of the person before whom the affidavit is about to be made and before, but not after, the affidavit is made. Every correction so made should be initialled by the person before whom the affidavit is made and should be made in such manner as not to render it impossible or difficult to read the original word or words, figure or figures, in respect of which the correction may have been made.¹

Amendment of affidavits.—An affidavit cannot be amended. A new affidavit incorporating the alteration should be filed. The new affidavit should not replace the old one and should not as such repeat all the facts. It should contain only that matter which is sought to be amended, *e.g.*,

“I make oath and say that my statement in para 4 of the affidavit sworn by me and filed on september 10, 1963 to the effect that Ghansyam Dass left Meerut on May 2, 1963 was based on wrong information and is not correct and that the said Ghansyam Dass really left Meerut on June 2, 1963.”

1. Allahabad High Court Rules, Rule 15.

CHAPTER XI
MODEL PLEADINGS

(I) *PLAINTS*

1. Interpleader Suit.

In the Court of City Munsif
Meerut.

Suit No. 10 of 1964.

X, son of *Y*, resident of 191 Thaper Nagar
Meerut.....Plaintiff.

V.

A, son of *B* resident of 169 Swamipara
Meerut.....Defendant No. 1.

and

C, son of *D* resident of 41, Moripara
Meerut.....Defendant No. 2.

X, the aforesaid plaintiff begs to submit as follows :—

(1) That on 2nd April 1963, one *M* deposited with the plaintiff Rs. 4000/- for safe custody.

(2) That the said *M* died on May 3, 1963.

(3) That *A*, the defendant no. 1, claims the said amount of Rs. 4000/- from the plaintiff under an assignment thereof to him by *M*.

(4) That *C*, the defendant no. 2 also lays claim to the said amount of Rs. 4000/- under an order of *M*, transferring the same to him.

(5) That the plaintiff is ignorant of the respective rights of the defendants.

(6) That the plaintiff has no claim upon the said amount other than for charges and costs and is ready and willing to deliver it to such person as the court shall direct.

(7) That there is no collusion between the plaintiff and either of the defendants.

(8) That the cause of action for the suit arose when on 10th December 1963, both the defendants raised claims to the said amount of Rs. 4000/- .

(9) That the defendants reside at Meerut within the jurisdiction of the Court.

(10) That the valuation of the suit for the purposes of jurisdiction is Rs. 4000/- and the suit being for a mere declaration is stamped with a court-fee of—only.

Reliefs

The plaintiff prays :—

(i) that the defendants be restrained by injunction from taking any proceedings against the plaintiff in relation to the said amount of Rs. 4000/- ;

(ii) that the defendants may be required to interplead together concerning their claims to the said amount of Rs. 4000/- ;

(iii) that some person be authorised to receive the said amount pending such litigation ; and

(iv) that upon delivering the said sum to such person, the plaintiff be discharged from all liability to either of the defendants in relation thereto.

Verification.—I, X, hereby declare that the contents of paragraphs 1 to 7 of the above plaint are true to my personal knowledge and the contents of paragraphs nos. 8 to 10 are believed by me on the information received to be correct.

Verified at Meerut this 15th day of January, 1964.

(Sd.) X

The plaintiff

Through Shri Dharam Vir Premi

Advocate

Meerut.

2. Malicious Prosecution

In the Court of Munsif

Meerut.

Suit No. 362 of 1963.

A son of B, resident of Mohalla Vijay Nagar
Meerut.....Plaintiff.

V.

1. X }
2. Y } sons of Z residents of 118, Thaper Nagar

MeerutDefendants.

The plaintiff above-named submits as follows :—

1. That on 3rd March 1963, the defendant X lodged a report with the Police Station Kotwali Sadar, Meerut, that the plaintiff made an attempt on his life with a spear near his neck and other parts of the body on the night that day.

2. That in consequence of the report a warrant was issued for the arrest of the plaintiff, and the plaintiff was arrested and kept in jail for a period of one month.

3. That after a protracted trial on the said charge the plaintiff was acquitted by the Court on 2nd November 1963, on the verdict that the complaint was false.

4. That the defendant had lodged the complaint against the plaintiff maliciously and without reasonable or probable cause.

5. That as a result of the said prosecution, the plaintiff has been subjected to great physical and mental pain, has been greatly lowered in the estimation of the society, could not attend his business and had to incur great expenses in defending himself against the said charge.

6. That the cause of action for the suit arose on 2nd November, 1963, when the plaintiff was acquitted.

7. That the plaintiff was prosecuted at Meerut and the defendants reside at Meerut within the jurisdiction of the Court.

8. That the valuation of the suit for the purposes of jurisdiction and Court-fee is Rs. 2800/- and accordingly a Court-fee of Rs.—is being paid.

Relief

9. The plaintiff claims :

(i) Rs. 2000/- as general damages for the loss of reputation and physical and mental pain suffered by the plaintiff.

(ii) Rs. 800/- as special damages, the details of which are—

| | |
|--|-----------------|
| (a) Fee paid to the pleader, for defence | Rs. 500/- . |
| (b) Fee paid to his clerk | ... Rs. 100/- . |
| (c) Expenses incurred in summoning two defence witnesses | ... Rs. 100/- . |
| (d) Loss of business | ... Rs. 100/- . |

Total Rs. 800.

(iii) Interest *pendente lite* and future.

Verification.—I, A, hereby, do declare that the contents of paragraphs 1 to 5 of the above plaint are true to my personal knowledge and the contents of paragraphs 6 to 8 are believed by me on the information received to be correct.

Verified at Meerut this 15th day of November, 1963.

(Sd.) A

The Plaintiff

Through Shri O. N. Mathur
Advocate
Meerut.

3. Wrongful Dismissal.

In the Court of City Munsif
Meerut.

Suit No. 191 of 1963.

A, son of B, resident of 9 Mansarover
Meerut.....Plaintiff.

V.

X, son of Y, resident of 171 Saket
Meerut.....Defendant.

The plaintiff above-named begs to state as follows—

(1) That on 1st June, 1960, the plaintiff and the defendant entered into an agreement under which the plaintiff was to serve as an accountant in the defendant's factory at a salary of Rs. 300/- per month for a period of two years.

(2) That in pursuance of the agreement the plaintiff joined the defendant's service on 2nd June, 1960.

(3) That on 1st May, 1961, the defendant wrongfully dismissed the plaintiff and did not permit to serve for the full term of two years as agreed upon.

(4) That the plaintiff has always been sincere to his duties and ever has been and still is ready to serve the defendant for the remainder period of two years in pursuance of the agreement.

(5) That the plaintiff as a result of his wrongful dismissal has suffered a loss of Rs. 3900/-, being pay for the thirteen months, the remainder portion of the period of agreement.

(6) That the cause of action for this suit arose on 1st May 1961, when the defendant wrongfully dismissed the plaintiff.

(7) That the defendant resides at Meerut within the jurisdiction of the Court.

(8) That the valuation of the suit for the purposes of jurisdiction and Court-fee is Rs. 3900/- and a Court-fee of Rs.—is being paid.

Relief

The plaintiff prays that the defendant may be directed to pay the sum of Rs. 3900/- to the plaintiff for damages for his wrongful dismissal.

Verification.—I, A, the plaintiff, do hereby verify that the contents of paragraphs 1 to 5 of the above plaint are true to my personal knowledge and the contents of paragraphs nos. 6 to 8 are believed by me on the information received to be correct.

Verified at Meerut this 4th day of July, 1963.

(Sd.) A, Plaintiff

Through Shri Shanti Sharup Garg
Advocate
Meerut.

4. For Damages on account of Injuries caused by Negligent Driving.

In the Court of Munsif
Meerut.

Suit No. 110 of 1964.

A, son of B, resident of 10, Durgabadi Meerut

Plaintiff.

V.

X, son of Y, resident of 96 Patel Nagar, Meerut

Defendant No. 1

and

H, son of M, resident of 82 Subhas Nagar, Meerut

Defendant No. 2

The plaintiff aforesaid states as follows :

(1) That the plaintiff is an employee of the C. D. A. Central Command, Meerut.

(2) That the defendant No. 1 owns a Fiat Car No. U. P. H. 1102 and defendant No. 2 is his driver.

(3) That on 20th December 1963, when the plaintiff was returning from office at about 5.45. P. M. in the evening and was near the Begum Bridge, the defendant No. 2 who was driving the car knocked the plaintiff down and overran him by his car.

(4) That in consequence of accident the plaintiff received serious injuries inasmuch as he got his left hand fractured and several contusions on different parts of his body.

(5) That the plaintiff had to incur great expenses in his treatment. Besides, due to the injuries the plaintiff had to absent himself from the office for one month for which he has lost pay.

(6) That the cause of action for the suit arose on 20th December 1963 when the accident took place.

(7) That the accident took place at Meerut and as such the Court has jurisdiction to try the suit.

(8) That the valuation of the suit for the purposes of jurisdiction and Court fee is Rs. 720/- and a Court fee of Rs.—accordingly is being paid.

Relief

The plaintiff prays.—

(i) That a decree for Rs. 720 be passed in his favour, the details of which are—

Special Damages

| | |
|--|-----------|
| (a) Expenses on Medicines— | Rs. 120/- |
| (b) Room Rent in the Hospital for 20 days— | Rs. 40/- |
| (c) Extra nourishment. | Rs. 150/- |
| (d) Loss of Pay for one month. | Rs. 210/- |
| General Damages. | Rs. 200/- |

—————
Total Rs. 720/-

(ii) That interest *pendente lite* and future be awarded to him.

Verification.—I, A, verify that the contents of paragraphs 1 to 5 of the above plaint are true to my personal knowledge and the contents of paragraphs 6 to 8 are believed by me on the information received to be correct.

Verified this 18th day of January, 1964.

(Sd.)A.

Plaintiff.

Through Shri Shiv Narain Rustogi
Advocate, Meerut.

— — —
Another Form

(Title)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is a shoemaker, carrying on business at . The defendant is a merchant of .

2. That on the day of 19 , the plaintiff was walking southward along the Begum Bridge in the city of Meerut, at about 7. P. M. in the night. He was obliged to cross the Begum Bridge which connects the city and the cantonment. While he was crossing this Bridge, a carriage of the defendant drawn by two horses under the charge and control of the defendant's servants was negligently, suddenly and without any warning, turned at a rapid and dangerous speed out of the Jawahar Quarters into the Bridge. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. That by the blow and fall and trampling, the plaintiff's left arm was broken and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering and unable to attend to his business, and incurred heavy and other expenses and sustained great loss of business and profits.

4. [*Facts showing when the cause of action arose and that the Court has jurisdiction.*]

5. [*Valuation of the suit for the purposes of jurisdiction and Court fee.*]

Relief

Verification

— — —
5. Money Lent

(Title)

A. B., the above-named plaintiff, states as follows :—

1. That on the 10th day of November, 1961, he lent the defendant 300 rupees payable on the 1st day of June, 1962.

2. That the defendant has not paid the same, except 100 rupees paid on the 1st day of June 1962.

[Where the plaintiff claims Exemption from any law of limitation say—].

3. That the plaintiff was a minor (or insane) from the day of till the day of .

4. [*Facts showing when the cause of action arose and that the Court has jurisdiction*].

5. The value of the subject-matter of the suit for the purpose of jurisdiction is rupees and for the purpose of Court fees is rupees .

The plaintiff claims rupees, with interest at per cent, from the day of 19 .

Verification

6. Money Overpaid

(*Title*)

A. B., the above-named plaintiff, states as follows.—

(1) That on the 15th day of July 1962, the plaintiff agreed to buy and the defendant agreed to sell 10 bars of silver at 1500 rupees per bar of fine silver.

(2) That the plaintiff procured the said bars to be assayed by E. F., who was paid by the defendant for such assay, and E. F., declared each of the bars to contain 800 grams of fine silver and the plaintiff accordingly paid the defendant 15,000 rupees.

(3) That each of the said bars contained only 600 grams of fine silver, of which fact the plaintiff was ignorant when he made the payment.

(4) That the defendant has not repaid the sum so overpaid.

[*As in paras 4 and 5 of form No. 5 and Relief claimed*].

Verification

7. Against a builder for defective workmanship

(*Title*)

A. B., the above-named plaintiff states as follows:—

1. That on the 13th day of June 1961, the plaintiff and the defendant entered into an agreement, and the original agreement is hereto annexed. (*Or state the tenor of contract*).

2. That the plaintiff duly performed all the conditions of the agreement on his part.

3. That the defendant [Built the house referred to in the agreement in a bad and unworkable manner].

[As in paras 4 and 5 of Form No. 5 and Relief claimed]

Verification

8. Use and Occupation

(Title)

A. B., the above-named plaintiff, executor of the will of X. Y., deceased states as follows:—

1. That the defendant occupied the House [No. 103, Banker Street] by permission of the said X. Y., from the 25th day of May, 1961; until the day of 10th June 1963, and no agreement was made as to payments for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth 30 rupees.

3. That the defendant has not paid the money.

[As in paras 4 and 5 of Form No. 5]

4. The plaintiff as executor of X. Y., claims *[Relief claimed]*.

Verification

9. On An Award

(Title)

A. B., the above-named plaintiff states as follows:—

1. That on the 3rd day of July 1962, the plaintiff and the defendant having a difference between them concerning [a demand of the plaintiff for the price of ten barrels of oil which the defendant refused to pay], agreed in writing to submit the difference to the arbitration of E. F. and G. H. and the original document is annexed hereto.

2. That on the 5th day of November 1962, the arbitrators awarded that the defendant should [pay the plaintiff 2,000 rupees].

3. That the defendant has not paid the money.

[As in paras 4 and 5 of Form No. 5, and Relief claimed].

Verification

10. Breach of agreement to purchase land

(Title)

A. B., the above-named plaintiff states as follows—

1. That on the 22nd day of March 1963, the plaintiff and the defendant entered into an agreement, and the original agreement is hereto annexed.

[Or, that on the 22nd day of March 1963, the plaintiff and the defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighas of land in the village of Lohari for 10,000 rupees.]

2. That on the 4th day of April 1963, the plaintiff, being then the absolute owner of the property [and the same being free from all the incumbrances as was made to appear to the defendant], tendered to the defendant a sufficient instrument of transfer of the same [or, was ready and willing, and is still ready and willing and offered to transfer the same to the defendant by a sufficient instrument] on the payment by the defendant of the sum agreed upon.

3. That the defendant has not paid the money.

[As in paras 4 and 5 of Form No. 5, and Relief claimed].

Verification

— — —

11. Not Delivering Goods Sold

(Title)

A. B., the above-named plaintiff states as follows :—

1. That on the 5th day of August 1963, the plaintiff and the defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to the plaintiff on the 20th day of December 1963, and the plaintiff should pay therefor 3000 rupees on delivery.

2. That on the (said) day the plaintiff was ready and willing and offered, to pay the defendant the said sum upon delivery of the goods.

3. That the defendant has not delivered the goods and the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[As in paras 4 and 5 of Form No. 5, and Relief claimed].

Verification

12. Breach of Contract to serve

(Title)

A. B., the above-named plaintiff, states as follows:—

1. That on the 2nd day of April 1963, the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an (annual) salary of 200 rupees, and that the defendant should serve the plaintiff as (an artist) for the term of (one year).

2. That the plaintiff has always been ready and willing to perform his part of the agreement [and on the 1st day of May 1963, offered so to do].

3. That the defendant (entered upon) the service of the plaintiff on the above-mentioned day, but afterwards on the 31st day of July 1963, he refused to serve the plaintiff as aforesaid.

[As in paras 4 and 5 of Form No. 5 and Relief claimed].

Verification

13. On a bond for the fidelity of a clerk

(Title)

A. B., the above-named plaintiff states as follows:—

1. That on the 1st day of June 1963, the plaintiff took E. F., into his employment as a clerk.

2. That in consideration thereof, on the 2nd day of June 1963, the defendant agreed with the plaintiff that if E. F. should not faithfully perform his duties as a clerk to the plaintiff or should fail to account to the plaintiff all moneys, evidences of debt or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof not exceeding 2000 rupees.

[Or, That in consideration thereof the defendant by his bond of the same date bound himself to pay the plaintiff the penal sum of 2000 rupees, subject to the condition that if E. F. should faithfully perform his duties as clerk and cashier to the

plaintiff and should justify account to the plaintiff for all monies, evidence of debt or other property which should be at any time held by him in trust for the plaintiff, the bond should be void].

[*Or*, That in consideration thereof, on the same date the defendant executed a bond in favour of the plaintiff and the original document is hereto annexed.

3. That between the 10th day of September 1963, and the 20th day of November 1963, *E. F.* received money and other property amounting to the value of 1500 rupees, for the use of the plaintiff for which sum he has not accounted to him, and the same still remains due and unpaid].

[*As in paras 4 and 5 of Form No. 5 and Relief claimed*].

Verification

14. By tenant against landlord with special damage

(Title)

A. B., the above-named plaintiff states as follows:—

1. That on the 2nd day of March 1961, the defendant, by a registered instrument, let to the plaintiff [the house No. 102, Banker Street] for the term of five years contracting with the plaintiff, that he, the plaintiff and his legal representative should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the 31st day of July 1963, during the said term, *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend 200 rupees in moving and lost the custom of *G. H.*, and *I. J.*, by such removal].

[*As in paras 4 and 5 of Form No. 5, and Relief Claimed*]

Verification

15. Procuring property by fraud

(Title)

A. B., the above-named plaintiff, states as follows.—

1. That on the 25th day of July 1962, the defendant, for the purpose of inducing the plaintiff to sell him certain goods,

represented to the plaintiff that [he, the defendant, was solvent, and worth 5000 rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell [and deliver] to the defendant, [dry goods] of the value of 2000 rupees.

3. That the said representations were false [*or state the particular falsehoods*] and were then known by the defendant to be so.

4. "That the defendant has not paid for the goods [*or if the goods were not delivered*]. The plaintiff, in preparing and shipping the goods and procuring their restoration, expended 1000 rupees.

[As in paras 4 and 5 of Form No. 5, and Relief Claimed]

Verification

— — —

16. Polluting the water under the plaintiff's land.

(Title)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called.....situate in Saket Meerut and of a well therein, and of water in the well, and was entitled to the use and benefit of the well and of the water therein, and to have certain springs and streams of water which flowed and ran into the well to supply the same to flow or run without being fouled or polluted.

2. That on the 25th day of April 1963, the defendant wrongfully fouled and polluted the well and the water therein and the springs and streams of water which flowed into the well.

3. That in consequence the water in the well became impure and unfit for domestic and other necessary purposes and the plaintiff and his family are deprived of the use and benefit of the well and water.

[As in paras 4 and 5 of Form No. 5, and Relief Claimed]

Verification

— — —

17. Carrying on a Noxious Manufacture

(Title)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called _____, situated in Mowana.

2. That ever since the 12th day of June 1963, the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter which spread themselves over and upon the said lands and corrupted the air, and settled on the surface of lands.

3. That thereby the trees, hedges, herbage and crops of the plaintiff growing on the lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the lands became unhealthy, and many of them were poisoned and died.

4. That the plaintiff was unable to graze the lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock therefrom, and has been deprived from having so beneficial and healthy a use and occupation of lands as he otherwise would have had.

[As in paras 4 and 5 of Form No. 5 and Relief Claimed]

Verification

18. Obstructing a right of way

(Title)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a house in the village of Faridpur.

2. That he was entitled to a right of way from the house over a certain field to a public highway and back again from the highway over the field to the house, for himself and his servants [with vehicles *or* on foot] at all times of the year.

3. That on the 16th day of March 1963, the defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles *or* on foot, *or* in any manner] along the way [and has ever since wrongfully obstructed the same].

4. *(State special damages, if any).*

(As in paras 4 and 5 of Form No. 5, and Relief Claimed)

Verification

19. Obstructing a highway

(Title)

A. B., the above-named plaintiff states as follows—

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from Budhana Gate to Begum Bridge so as to obstruct it.

2. That thereby the plaintiff while lawfully passing along the said highway, fell over the said earth and stones [*or* into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[As in paras 4 and 5 of Form No. 5 and Relief Claimed]

Verification

20. Obstructing a Right to use Water for Irrigation

(Title)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, etc., and entitled to take and use such portion of the water of a certain stream for irrigating the said lands.

2. That on the 23rd day of December, 1963, the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[As in paras 4 and 5 of Form No. 5 and Relief Claimed]

Verification

21. Injuries caused by Negligence on a Railroad

(Title)

A. B., the above-named plaintiff states as follows—

1. That on the 15th day of March, 1963, the defendants were common carriers of passengers by railway between Meerut and Saharanpur.

2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said railway.

3. That while he was such passenger at [*or*, near the station of Khatauli *or* between the stations of Daurala and Khatuli], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cent, etc. *and state the special damages, if any, as*] and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as (a salesman).

[As in paras. 4 and 5 of Form No. 5, and Relief Claimed].

[Or thus—2. That on that day the defendants by their servants so negligently and unskilfully drove and damaged an engine and a train of carriages attached thereto upon and along the defendant's railway which the plaintiff was then lawfully crossing that the said engine and train were driven and struck against the plaintiff, whereby, etc., *as in para. 3*].

Verification

22. Movables Wrongfully Detained

(Title)

A. B., the above-named plaintiff states as follows—

1. That on the 25th day of June 1963, plaintiff owned [*or state facts showing a right to the possession*] the goods mentioned in the Schedule hereto annexed [*or describe the goods*], the estimated value of which is 500 rupees.

2. That from that day until the commencement of this suit the defendant has detained the same from the plaintiff.

3. That before the commencement of this suit, on the 10th day of December 1963, the plaintiff demanded the same from the defendant, but he refused to deliver them.

[*As in paras 4 and 5 of Form No. 5*].

Relief

The plaintiff claims—

(i) delivery of the said goods ; or 500 rupees, in case delivery cannot be had ;

(ii) 100 rupees compensation for the detention thereof.

Verification

23. Rescission of a Contract on the Ground of Mistake

(Title)

A. B., the above-named plaintiff states as follows—

1. That on the 22nd day of September, 1963, the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at Meerut, contained [ten bighas].

2. That the plaintiff was thereby induced to purchase the same at the price of 600 rupees in the belief that the said representation was true, and signed an agreement of which the original is hereto annexed. But the land has not been transferred to him.

3. That on the 1st day of November, 1963, the plaintiff paid the defendant 200 rupees as part of the purchase-money.

4. That the said piece of ground contained in fact only [five bighas].

[As in paras 4 and 5 of Form No. 5].

Relief

The plaintiff claims—

- (i) 200 rupees with interest from the 1st day of November 1963 ;
- (ii) that the said agreement be delivered up and cancelled.

Verification

— — —

24. An Injunction Restraining Waste

(Title)

A. B., the above-named plaintiff states as follows—

- 1. That the plaintiff is the absolute owner of (*describe the property*).
- 2. That the defendant is in possession of the same under a lease from the plaintiff.
- 3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

[As in paras 4 and 5 of Form No. 5]

6. The plaintiff claims that the defendant be restrained by an injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation may also be claimed*]

Verification

— — —

25. Injunction Restraining Nuisance

(Title)

A. B., the above-named plaintiff states as follows—

- 1. That the plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. 203, Banker Street, Meerut.]
- 2. That the defendant is and at all the said times was, the absolute owner of [a plot of ground in the same street .]
- 3. That on the 30th day of March, 1963, the defendant erected upon his said plot a slaughter-house, and still maintains the same ; and from that day until the present time has continually

caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff.]

[4. That in consequence the plaintiff has been compelled to abandon the said house, and has been unable to rent the same].

[As in paras 4 and 5 of Form No. 5].

7. The plaintiff claims that the defendant be restrained by injunction from committing or permitting any further nuisance.

Verification

26. Public Nuisance

(Title)

A. B., the above-named plaintiff states as follows—

1. The defendant has wrongly heaped up earth and stones on a public road known as Begum Bridge Street at Meerut so as to obstruct the passage of the public along the same and threatens and intends, unless restrained from so doing, to continue and repeat the said wrongful act.

2. That the plaintiff has obtained the consent in writing of the Advocate General [*or* of the Collector or other person appointed in this behalf] to the institution of this suit.

[As in paras 4 and 5 of Form No. 5].

5. The plaintiff claims—

(i) a declaration that the defendant is not entitled to obstruct the passage of the public along the said road ;

(ii) an injunction restraining the defendant from obstructing the passage of the public along the said public road and directing the defendant to remove the earth and stones wrongfully heaped up as aforesaid.

Verification

27. Execution of Trust

(Title.)

A. B., the above-named plaintiff, states as follows—

1. That he is one of the trustees under an instrument of settlement bearing date on or about the 20th day of December, 1963, made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [*or* an instrument of transfer of the estate and effects of *E. F.* for the benefits of *C. D.* the defendant and, the other creditors of *E. F.*]

2. That *A. B.* has taken upon himself the burden of the said trust and is in possession of [*or of the proceeds of*] the movable and immovable property transferred by the said instrument.

3. That *C. D.* claims to be entitled to a beneficial interest under the instrument.

[As in paras 4 and 5 of Form No. 5]

6. That the plaintiff is desirous to account for all the rents and profits of the said immovable property [and the proceeds of the sale of the said, *or of part of the said, immovable property, or movable or the proceeds of the sale of or of part of, the said movable property or the profit accruing to the plaintiff as such trustee in the execution of the said trust*]; and he prays that the court will take the accounts of the said trust, and also that the whole of the said trust estate may be administered in the court for the benefit of *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of *C. D.* and such other persons so interested as the court may direct, *or that C. D. may show good cause to the contrary.*

Verification

— — —

28. Foreclosure or Sale

(Title.)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is mortgagee of the lands belonging to the defendant.

2. That the particulars of the mortgage are—

(a) (date) ;

(b) (names of mortgagor and mortgagee) ;

(c) (sum secured) ;

(d) (rate of interest) ;

(e) (property subject to mortgage) ;

(f) (amount now due) ;

(g) *(if the plaintiff's title is defective, state shortly the transfers or devolution under which he claims).*

(If the plaintiff is mortgagee in possession, add)

3. That the plaintiff took possession of the mortgaged property on the 25th day of April, 1962 and is ready to account as mortgagee in possession from that time.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims—

(i) payment, or in default (sale *or*) foreclosure [and possession] ;

[Where Order 34, rule 6 applies.]

(ii) in case the proceeds of the sale are found to be insufficient to pay the amount due to the plaintiff, then that liberty be reserved to the plaintiff to apply for a decree for the balance.

Verification

— — —

29. Redemption

(Title.)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is mortgagor of lands of which the defendant is mortgagee.

2. That the particulars of the mortgage are—

(a) (date) ;

(b) (names of the mortgagor and the mortgagee) ;

(c) (sum secured) ;

(d) (rate of interest) ;

(e) (property subject to mortgage) ;

(f) *(if the plaintiff's title is defective, state shortly the transfers or devolution under which he demands).*

(If the defendant is mortgagee in possession, add)

3. That the defendant has taken possession [*or* has received the rents] of the mortgaged property.

[As in paras 4 and 5 of Form No. 5.]

Relief

The plaintiff claims to redeem the said property and to have the same reconveyed to him [and to have possession thereof.]

Verification

— — —

30. Specific Performance (No. 1)

(Title.)

A. B., the above-named plaintiff states as follows—

1. That by an agreement dated the 20th day of March, 1962 and signed by the defendant, he contracted to buy of (*or* sell to) the plaintiff certain immovable property therein described and referred to, for the sum of 3000 rupees.

2. That the plaintiff has applied to the defendant specifically to perform the agreement on his part, but the defendant has not done so.

3. That the plaintiff has been and still is ready and willing specifically to perform the agreement on his part of which the defendant has had notice.

[As in paras 4 and 5 of Form No. 5.]

Relief

The plaintiff claims that the court will order the defendant specifically to perform the agreement and to do all acts necessary to put the plaintiff in full possession of the said property [*or* to accept a transfer and possession of the said property].

Verification

31. Specific Performance (No. 2)

(Title.)

A. B., the above-named plaintiff states as follows—

1. That on the 10th day of February 1962, the plaintiff and defendant entered into an agreement, in writing, and the original document is hereto annexed.

2. That the defendant was absolutely entitled to the immovable property described in the agreement.

3. That on the 1st day of March 1962, the plaintiff tendered 3000 rupees to the defendant, and demanded a transfer of the said property by a sufficient instrument.

4. That on the 2nd day of June 1962, the plaintiff again demanded such transfer. [*Or* the defendant refused to transfer the same to the plaintiff.]

5. That the defendant has not executed any instrument of transfer.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims—

- (i) that the defendant transfers the said property to the plaintiff by a sufficient instrument [*following the terms of the agreement*]
- (ii) 500 rupees compensation for withholding the same.

Verification

— — —

32. Dissolution of Partnership
(Title)

A. B., the above-named plaintiff states as follows—

1. That he and C. D., the defendant, have been for ten years (*or* months) past carrying on business together under articles of partnership in writing [*or* under a deed, *or* under a verbal agreement.]

2. That several disputes have arisen between the plaintiff and defendant as such partners whereby it has become impossible to carry on the business in partnership with advantage to the partners [*or* the defendant has committed the following breaches of the partnership articles—

(1)

(2)

(3)

]

(*As in paras 4 and 5 of Form No. 5*)

Relief

The plaintiff claims

- (1) dissolution of the partnership ;
- (2) that account be taken ;
- (3) that a receiver be appointed.

[In suits for the winding up of any partnership, omit the claim for dissolution ; and instead insert a paragraph stating the facts of partnership having been dissolved]

Verification

— — —

33. Restitution of Conjugal Rights
(Title)

A. B., the above-named plaintiff states as follows—

- 1. That the defendant was married to the plaintiff on June 16, 1959, and still is the wife of the plaintiff.

2. That the defendant in September 1963 has deserted the plaintiff and lives with her father and without any lawful excuse has refused to come to the plaintiff's place.

[As in paras 4 and 5 of Form No. 5.]

5. The plaintiff claims a decree directing the defendant to live with the plaintiff and to allow the plaintiff a free exercise of his conjugal rights with the defendant.

Verification

— — —

33-A. For maintenance by wife against her husband
(Title)

A. B., the above-named plaintiff states as follows—

1. The plaintiff was married to the defendant in April 1956, and still is the legal wife of the defendant.

2. On 20th day of June 1962, the defendant has married a second wife named Sheela and thereafter on 18th day of August 1962, has without any justification turned the plaintiff out of his house.

3. The defendant is a P. C. S. officer drawing a salary of Rs. 8000 a year and having regard to the position of the parties and her requirements the plaintiff claims Rs. 300 monthly as her maintenance.

[As in paras 4 and 5 of Form No. 5].

Reliefs

6. The plaintiff's claims—

(i) A decree may be passed and thereby Rs. 300 a month may be fixed as the plaintiff's maintenance.

(ii) Rs. 1800 for arrears of maintenance, at Rs. 300 a month for the period the plaintiff has lived separately from the defendant be awarded.

Verification

— — —

34. Dissolution of Marriage
(Title)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff was married to the defendant six years ago.

2. That since then the relations between the plaintiff and the defendant have not been happy. The defendant has given

her harsh treatment and quite often has inflicted physical injuries upon the plaintiff.

3. That three years ago the defendant sent away the plaintiff to her parental house and since then he has neither come to bring her nor provided her any maintenance allowance.

4. That the defendant has retained her all personal belongings and does not appear to return them to the plaintiff.

5. That the plaintiff is entitled to a decree for divorce and to return of articles given in the schedule annexed with the plaint or their value.

[*As in paras 4 and 5 of Form No. 5*]

Reliefs

The plaintiff prays :

(1) That the marriage between the defendant and the plaintiff be dissolved and for the purpose a decree for divorce may be passed.

(2) That the defendant be ordered to return the articles given in the schedule annexed with the plaint. In case of default a decree for 5000 rupees be passed in favour of the plaintiff against the defendant.

Verification

35. Setting Aside Alienation Made By A Hindu Father

(Title)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is one of the two sons of defendant No. 2 and is, and have always been, member of a joint Hindu Family with him.

2. That the said family is governed by the Benares School of Mitakshara Law.

3. That the property given at the foot of the plaint is the joint family property of the plaintiff, his brother and defendant no. 1.

4. That by a hypothecation deed dated 10th September 1956, the said defendant no. 2 mortgaged the said property to defendant no. 1.

5. That the mortgage was made without a legal necessity or, at any rate, there was no legal necessity to borrow money at such a high rate of interest.

[*As in paras 4 and 5 of Form No. 5*]

Relief

The plaintiff claims that the said mortgage be declared null and void.

Verification

— — —

36. On a Promissory Note*(Title)*

A. B., the above-named plaintiff states as follows—

1. That on 1st June 1960, the defendant executed a promissory note for Rs. 500/- in favour of the plaintiff payable on demand with interest at the rate of 1 per cent per mensem.

2. That the said note or any part thereof has not been paid.

[As in paras 4 and 5 of Form No. 5]

Reliefs

The plaintiff claims—

1. Rs. 520 as per account given below.

2. Interest from the date of suit to the date of the payment.

Verification

— — —

37. On a Simple Money Bond*(Title)*

A. B., the above-named plaintiff states as follows—

1. That on July 22, 1961, the defendant borrowed Rs. 1000/- from the plaintiff and in lieu thereof executed a bond in favour of the plaintiff payable on demand with interest at a rate of 1 per cent per mensem.

2. That the defendant has not paid the loan or any part thereof.

[As in paras 4 and 5 of Form No. 5]

Reliefs

The plaintiff claims—

(i) Rs. 1300 as per account given below.

(ii) Interest from the date of the institution of the suit to the date of the payment.

Verification

— — —

38. By an agent for the recovery of commission from the principal

(Title)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff works as a Commission Agent in Bombay and the defendant runs a Cloth-Mill at Modinagar.
2. That the defendant by his letter dated 2nd September 1962 asked the plaintiff to purchase 100 bales of cotton for him and by the same letter agreed to pay a commission of five percent on the amount of cotton purchased.
3. That the plaintiff purchased the said quantity of cotton and booked the same to the defendant.
4. That the defendant sent Rs. 500/- to the plaintiff towards commission on May 3, 1963 and has not paid the rest.

[As in paras 4 and 5 of Form No. 5]

Reliefs

The plaintiff claims—

- (i) Rs. 1300 on account of the balance of his commission and interest as per account given below.
- (ii) Interest from the date of suit to that of payment.

Verification

— — —

39. On enforcement of a charge

(Title)

A. B., the above-named plaintiff states as follows—

1. That the defendants are the sons of the plaintiff.
2. That by a private deed of partition dated 3rd June, 1962, to which the plaintiff and the defendants were parties, the whole of the estate left by the plaintiff's husband was equally divided between the defendants and it was agreed that each of the defendants would pay a monthly allowance of Rs. 200 to the plaintiff for her life. The amount of the said monthly allowance was created a charge on the shares of the each defendant.
3. That the defendants ever since the above said partition have been in possession of the property allotted to him and given in the schedule annexed with the plaint.
4. That neither of the defendants have paid the aforesaid monthly allowance of Rs. 200 or any part thereof ever since the date of aforesaid partition.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims Rs. 3000 as principal and Rs. 300 on account of interest due from the date of partition, or in default the sale of the property given in the schedule annexed to the plaint.

Verification

— — —

40. For Damages for not Certifying Payment of A Decree

(Title)

A. B., the above-named plaintiff states as follows—

1. That on 30th June 1963, the plaintiff paid to the defendant and the defendant accepted Rs. 3000/- in full satisfaction of the defendants claim under a decree No. 203 of 1963, passed by this court and it was implied that the defendant would certify the amount to the court and would not take out the execution of the decree.

2. That in spite of the said payment and the said implied agreement the defendant had taken out the execution of the decree. In consequence the plaintiff had to pay on September 2, 1963, a sum of Rs. 3100/- being the decretal amount and the costs given in the warrant

[As in Paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims Rs. 3100 as damages with interest from the date of the institution of the suit to that of payment.

Verification

— — —

41. For refund of an Uncertified Payment

(Title)

A. B., the above-named plaintiff states as follows—

1. That on 25th day of May 1963, the plaintiff paid Rs. 2000 to the defendant in part payment of the latter's decree No. 206 of 1963, passed by this court with the agreement that the defendant will credit the amount towards the said decree.

2. That on 3rd day of November 1963, the defendant took out the execution of the decree in full and did not credit the amount of Rs. 2000 paid to him as aforesaid.

[As in Paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims the refund of 2000 rupees with 120 rupees on account of interest from the date of payment to the date of suit at the rate of 1 per cent per mensem, by way of damages and further interest from the date of suit to that of payment.

Verification

— — —

42. For Dower (Prompt)

(Title)

A. B., the above-named plaintiff states as follows—

1. That the parties to the suit are Sunni Mohammadans.
2. That on the 3rd day of July 1960, the plaintiff was married to the defendant and at the time of marriage it was verbally agreed between the parties that the dower debt of the plaintiff should be Rs. 2000, out of which Rs. 1000, should be prompt dower.
3. That on the 20th day of March 1961, the plaintiff demanded from the defendant the payment of Rs. 1000, but the defendant refused and has not paid the same or any part of it.

[As in Paras 4 and 5 of the Form No. 5]

Relief

The plaintiff claims the payment of Rs. 1000 with interest from the date of the institution of the suit to that of payment.

Verification

— — —

43. Against Surety for Payment of Rent

(Title)

A. B., the above-stated plaintiff states as follows—

1. That on the 10th day of May 1959, E. F. hired from the plaintiff for the term of 6 years, [house no. 55, Kurzon Street,] at the annual rent of 300 rupees payable [monthly].
2. That the defendant agreed, in consideration of the letting of the premises to E. F., to guarantee the punctual payment of the rent.
3. That the rent for the month of July 1960, amounting to 300 rupees, has not been paid.

[If, by the terms of the agreement, notice is required to be given to the surety add—]

4. That on the 1st day of September 1960, the plaintiff gave notice to the defendant of the non-payment of the rent and demanded payment thereof.

5. That the defendant has not paid the same.

[As in paras 4 and 5 of Form No. 5 and Relief Claimed]

Verification

44. On an Agreement of Indemnity

(Title)

A. B., the above-named plaintiff states as follows—

1. That on the 20th day of March, 1962, the plaintiff and the defendant being partners in trade under the style of A. B. and C. D. dissolved the partnership, and mutually agreed that the defendant should take and keep all the partnership property, pay all the debts of the firm and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the firm.

2. That the plaintiff duly performed all the conditions of the agreement on his part.

3. That on the 20th day of December 1963, [a judgment was recovered against the plaintiff and the defendant by E. F., in the High Court of Judicature at Allahabad, upon a debt due from the firm to E. F., and on the 28th day of December 1963,] the plaintiff paid 2000 rupees [in satisfaction of the same].

4. That the defendant has not paid the same to the plaintiff.

[As in paras 4 and 5 of Form No. 5 and Relief Claimed]

Verification

45. For Arrears of Rent

(Title)

A. B., the aforesaid plaintiff states as follows—

1. That the plaintiff by a lease deed dated May 3, 1962, let a house the boundaries of which are given below in Thaper Nagar Meerut to the defendant for a period of three years at a rent of Rs. 100/- per month.

Boundaries of the said house

*

*

*

*

2. That the defendant has been in possession of the house under the said lease from May 3, 1962 to April 30, 1963, but has not paid rent for the said period.

[As in paras 4 and 5 of Form No. 5]

Reliefs

The plaintiff claims—

1. Rs. 1100/- on account of rent.
2. Rs. 77/- on account of interest.
3. Interest from the date of suit to that of payment.

*Verification***46. For Ejectment on expiry of term**

(Title)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff by a deed of lease dated 1st May, 1958, let out a house described below for a term of five years.

Description of the house

*

*

*

2. That the said term expired on 1st May, 1963, but the defendant has not vacated the possession and is still in possession.

3. That the defendant has (give the facts which entitle the plaintiff to sue for ejectment under the local Control of Rent and Eviction Act, if any) and is thus liable for ejectment under section—of the Act.

[As in paras 4 and 5 of Form No. 5]

Reliefs

The plaintiff claims—

1. That the possession of the same house be given to the plaintiff.
2. Rs. 200/- on account of mesne profits.

*Verification***47. By servant for his wages**

(Title)

A. B., the above-stated plaintiff states as follows—

1. That the defendant on March 1, 1963, employed the plaintiff as an accountant in his factory on or monthly salary of Rs. 200/-.

2. That during employment the plaintiff received very cruel and humiliating treatment at the hands of the defendant and the plaintiff had to leave the defendant's service on June 1, 1963.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims Rs. 600, for his pay from March 1, 1963 to June 1, 1963, with interest from the date of suit to that of payment.

*Verification***48. Suit on Account Stated***(Title)*

A. B., the above-named plaintiff states as follows—

1. That the plaintiff carries on business as grain dealer at Meerut and the defendant carries on business as sugar merchant at Muzaffarnagar.

2. That the plaintiff used to order from the defendant raw sugar from time to time on credit and the defendant used to order wheat from the plaintiff from time to time.

3. That on September 10, 1962, the defendant came to the plaintiff's shop and after going through the accounts on each side, agreed that there was a balance of Rs. 1500/- in favour of the plaintiff. The said balance was entered on page 80 of the plaintiff's account book, and was duly signed by the defendant.

4. That the defendant has not paid anything since September 10, 1962.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims payment of Rs. 1500/- with interest from the date of the institution of the suit to the date of payment

*Verification***49. Against a carrier (not being a common carrier) for Injury to Goods***(Title)*

A. B., the above-named plaintiff states as follows—

1. That on the 10th day of March, 1963, the defendant by a verbal agreement with the plaintiff undertook to carry carefully the plaintiff's goods, the details of which are given in the Schedule enclosed with the plaintiff by a truck from Meerut to Ghaziabad.

2. That on the 15th day of March, 1963, the plaintiff delivered the said goods for the purpose but the defendant did not carefully carry the goods.

3. That during the course of journey the said goods have been broken and badly damaged by the negligence of the defendant.

Particulars of Negligence

*

*

*

Particulars of Damage

*

*

*

[*As in paras 4 and 5 of Form No. 5*]**Relief**

The plaintiff claims 2000 rupees for damage to goods, with interest from date of suit to that of payment.

Verification

50. Against Common Carrier for Damages for Delay in Delivery of Goods

(Title)

A. B., the above-named plaintiff states as follows—

1. That the defendant is a common carrier of goods from Delhi to Agra.

2. That on the 23rd day of June, 1963, the plaintiff delivered to the defendant one parcel of Cakes to be transported from Delhi to Agra and to be delivered there within a reasonable time.

3. That the defendant failed to deliver the said parcel of Cakes within the reasonable time but delivered the same after one week, with the result that the Cakes became stale and worthless.

Particulars of damage[*As in paras 4 and 5 of Form No. 5*]**Relief**

The plaintiff claims Rs. 40/- with interest from date of suit to that of payment.

Verification

51. Suit against Railway for Delay in Delivery

(Title)

A. B., the above-named plaintiff states as follows—

1. That on the 15th day of July, 1963, the plaintiff delivered to the servants of the defendants at Meerut a parcel of fresh mangoes for despatch by goods train from Meerut to Kanpur, the R. R. No. being 243.

2. That the usual and reasonable period of transit by goods train from Meerut to Kanpur is 4 days.

3. That the servants of the defendant delayed the consignment of the goods and delivery to the plaintiff of the said parcel on

the 26th day of July, 1963, six days after the time when it ought to have been delivered.

4. That in consequence, the mangoes were spoiled and became worthless.

5. That the plaintiff has served notice to the defendant as required under section 80 of the Code of Civil Procedure.

[As in paras 4 and 5 of Form No. 5]

Particulars of damage

Relief

The plaintiff claims Rs. 50/- as damages with interest from date of suit to that of payment.

Verification

— — —

52. Goods sold at a Fixed Price and Delivered

(Title)

A. B., the above-named plaintiff states as follows—

1. That on the 26th day of November, 1962, E. F. sold and delivered to the defendant [one hundred barrels of flour, or the goods mentioned in the Schedule hereto annexed, or sundry goods].

2. That the defendant promised to pay 3000 rupees for the said goods on the delivery [or on the day of , some day before the plaint was filed].

3. That the defendant has not paid the same.

4. That E. F., died on the 3rd day of March, 1963. By his last will he appointed his brother, the plaintiff, his executor.

[As in paras 4 and 5 of Form No. 5]

The plaintiff as executor of E. F. claims [*Relief Claimed*]

Verification

— — —

53. Goods sold at a Reasonable Price and Delivered

(Title)

A. B., the above-named plaintiff states as follows—

1. That on the 15th day of December, 1962, the plaintiff sold and delivered to the defendant [*sundry articles of house furniture*], but no express agreement was made as to the price.

2. That the goods were reasonably worth 500 rupees.

3. That the defendant has not paid the money.

[As in paras 4 and 5 of Form No. 5 and Relief Claimed]

Verification

— — —

54. Goods made at defendant's request and not accepted*(Title)*

A. B., the above-named plaintiff states as follows—

1. That on the 24th day of December, 1962, *E. F.* agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*] and that *E. F.* should pay for the goods on delivery 600 rupees.

2. That the plaintiff made the goods, and on the 10th day of April, 1963, offered to deliver them to *E. F.*, and has ever since been ready and willing so to do.

3. That *E. F.*, has not accepted the goods or paid for them.

[As in paras 4 and 5 of Form No. 5 and Relief Claimed]

Verification

— — —

55. Deficiency upon a re-sale [Goods sold at auction]*(Title)*

A. B., the above-named plaintiff states as follows—

1. That on the 20th day of March, 1963, the plaintiff put up at auction sundry [*goods*], subject to the condition that all goods not paid for and removed by the purchaser within [*ten days*] after the sale should be re-sold by auction on his account, of which condition the defendant had notice.

2. That the defendant purchased [*one crate of crockery*] at the auction at the price of 200 rupees.

3. That the plaintiff was ready and willing to deliver the goods to the defendant on the date of the sale and for [*ten days*] after.

4. That the defendant did not take away the goods purchased by him, nor pay for them within [*ten days*] after the sale, nor afterwards.

5. That on the 15th day of April 1963, the plaintiff re-sold the [*crate of crockery*], on account of the defendant, by public auction, for 150 rupees.

6. That the expenses attendant upon such re-sale amounted to 60 rupees.

7. That the defendant has not paid the deficiency thus arising, amounting to 110 rupees.

[As in paras 4 and 5 of Form No. 5 and Relief Claimed]

Verification

— — —

56. For not Delivering Goods according to sample
(Title)

A. B., the above-named plaintiff states as follows—

1. That on the 15th day of August, 1962, by an agreement the defendant agreed to deliver to the plaintiff 100 bags of wheat at the rate of Rs. 50 per bag as per sample on August 2, 1962.

2. That in pretended fulfilment of his agreement, the defendant on August 20, 1962, delivered the 100 bags of wheat. But the said 100 bags of wheat were not of the same sample as previously shown and the plaintiff refused to take delivery.

3. That the plaintiff has suffered damages in consequence of the defendant's breach of contract.

Particulars of Damages

*

*

*

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims Rs. /- as damages with interest from the date of the institution of the suit to that of payment.

Verification

57. Against a vendor for Refund of Purchase Money on Ground of latter's Defect of Title

(Title)

A.B., the above-named plaintiff states as follows :—

1. That on the 10th day of July, 1961, the defendant by a sale-deed sold two shops therein described to the plaintiff for a sum of 6,000 rupees, which the latter paid in cash and put the latter in possession.

2. That one Mr. X, a brother of the defendant filed a suit against the plaintiff (being suit No. 302 of 1961), in the Court of Civil Judge, Meerut for the recovery of one shop alleging that the two shops belonged to his father and that he inherited one of them.

3. That the plaintiff defended the suit but the suit was decreed on 20th July, 1962, and in consequence the plaintiff was deprived of the possession of one shop on September 1, 1962.

[As in paras 4 and 5 of Form No. 1]

Relief

The plaintiff claims Rs. 3000 being the one-half consideration of the sale-deed of the defendant in respect of one shop lost by the plaintiff.

*Verification***58. Services at a Reasonable Rate***(Title)*

A.B., the above-named plaintiff states as follows—

1. That between the 2nd day of July, 1963, and the 25th day of July 1963, at Meerut, plaintiff [*executed sundry drawings, designs and diagrams*], for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. That the services were reasonably worth 200 rupees.

3. That the defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 5 and Relief Claimed*]

*Verification***59. Services and Materials at a Reasonable Cost***(Title)*

A.B., the above-named plaintiff states as follows—

1. That on the 30th day of April, 1963, at Meerut, the plaintiff built a house [known as No. 102, in Mansarover], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the amount to be paid for such work and materials.

2. That the work done and materials supplied were reasonably worth 6000 rupees.

3. That the defendant has not paid the money.

[*As in paras 4 and 5 of Form No. 5 and Relief Claimed*]

*Verification***60. For damages for the Bite of Defendant's Dog***(Title)*

A.B., the above-named plaintiff states as follows—

1. That the defendant kept a dog in his house no. 192 in Thaper Nagar, Meerut.

2. That on the 10th day of May, 1963, the said dog, when the plaintiff was passing in front of the defendant's house, attacked and bit the plaintiff causing him bodily injuries.

3. That the defendant knew that the said dog was of fierce and mischievous nature and had bitten and attacked other individuals also on several other occasions.

Particulars of injuries caused

* * * *

Particulars of the special damages claimed.

* * * *

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims Rs. 200, as general damages for bodily pain and other suffering and Rs. 100, as special damages totalling Rs. 300, with interest from the date of the institution of the suit to that of the payment.

Verification

— — —

61. For Assault and Battery

(Title)

A.B., the above-named plaintiff states as follows—

1. That on the 25th day of March, 1963, the defendant assaulted and beat the plaintiff at his shop, by first striking with fist and then with stick resulting in fracture of the plaintiff's arm and several other bodily injuries to the plaintiff.

2. That for the injuries, the plaintiff could not attend his business for two months and had to incur great expenses in recovering from the injuries.

Particulars of Special damages

(Give medical expenses and loss for not attending to business).

[As in paras 4 and 5 of Form No. 5]

Reliefs

The plaintiff claims payment of—

(i) Rs. 500, as general damages for humiliation and bodily suffering.

(ii) Rs. 200, as special damages.

(iii) Interest from the date of the institution of the suit to that of payment.

Verification

— — —

62. For damages for wrongful arrest before judgment*(Title)*

A. B., the above-named plaintiff states as follows—

1. That on the 10th day of April, 1963, the defendant instituted a suit against the plaintiff (Suit No. 302 of 1963) in the Court of the City Munsif, Meerut for the recovery of Rs. 2500, on a promissory-note.

2. That on the 20th day of April, 1963, the defendant applied for and obtained an order for the arrest of the plaintiff before judgment in the suit and in consequence the plaintiff was arrested on the 22nd day of April, 1963.

3. That the said order for the arrest of the plaintiff was without any reasonable or probable cause and the defendant's allegation that the plaintiff had left the local limits of the jurisdiction of the Court was false.

4. That in consequence the plaintiff has suffered great humiliation and damages.

Particulars

* * * *

[As in paras 4 and 5 of Form No. 5]

Reliefs

The plaintiff claims—

- (i) Rs. 1000, as damages for loss of reputation ;
- (ii) Rs. 600, as special damages ; and
- (iii) Interest from the date of the institution of the suit to that of the payment.

Verification

— — —

[A plaint for damages for wrongful attachment before judgment may be drafted on the similar lines].

63. For conversion of goods*(Title)*

A.B., the above-named plaintiff states as follows—

1. That on the 20th day of June, 1962, the plaintiff before he left for U. S. A. delivered his Ambassador Car No. DLM-1102, to the defendant on condition that on return he would take it back.

2. That the plaintiff on his return from U. S. A. demanded the return of his said car and also gave him a registered notice for the purpose on December 1, 1963, but the defendant refused to return ; the defendant has sold the said car and converted the proceeds of the sale to his own use.

3. That the defendant wrongfully deprived the plaintiff of the said car which was valued at Rs. 13000/-.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims Rs. 13000, for conversion with interest from the date of the institution of the suit to that of payment.

Verification

64. Restoration of movable property threatened with destruction, and for an Injunction

(Title)

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists *[or state any facts showing that the property is of a kind that cannot be replaced by money]*.

2. That on the 23rd day of April, 1962, he deposited the same for safe keeping with the defendant.

3. That on the 2nd day of November, 1963, he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. That the defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. No pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

[As in paras 4 and 5 of Form No. 5]

Reliefs

The plaintiff claims—

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting] ;

(2) that he be compelled to deliver the same to the plaintiff.

Verification

65. Diverting a water-course*(Title)*

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated [on a stream] known as the Ashoka Flour Mill, in the village of Lohari in the district of Muzaffarnagar.

2. That by reason of such possession the plaintiff was entitled to the flow of the stream for working the mill.

3. That on the 20th day of April, 1963, the defendant, by cutting the bank of the stream, wrongfully diverted water thereof, so that less water ran into the plaintiff's mill.

4. That by reason thereof the plaintiff has been unable to grind more than 10 sacks per day, whereas, before the said diversion of water, he was able to grind 30 sacks per day.

[As in paras 4 and 5 of Form No. 5 and Relief Claimed]

Verification

**66. Fraudulently procuring credit to be given
to another person**

(Title)

A. B., the above-named plaintiff states as follows—

1. That on the day of 19 , the defendant represented to the plaintiff that *E. F.*, was solvent and in good credit, and worth rupees over all his liabilities [*or* that *E. F.*, then held a responsible situation and was in good circumstances and might safely be trusted with goods on credit].

2. That the plaintiff was thereby induced to sell to *E. F.*, [rice of the value of rupees [on months credit].

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or* to deceive and injure the plaintiff].

4. That *E. F.*, [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same.

[As in paras 4 and 5 of Form No. 5 and Relief Claimed]

Verification

**67. Against a fraudulent purchaser and his transferee
with notice**

(Title)

A. B., the above-named plaintiff states as follows—

1. That on the day of 19 , the defendant C. D., for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell and deliver to C. D. [one hundred boxes of tea], the estimated value of which is rupees.

3. That the said representations were false and were then known by C. D. to be so [or at the time of making the said representations, C. D. was insolvent, and knew himself to be so].

4. That C. D. afterwards transferred the said goods to the defendant E. F., without consideration [or who had notice of the falsity of the representation].

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims—

(1) delivery of the said goods, or rupees, in case delivery cannot be had;

(2) rupees compensation for the detention thereof.

Verification

**68. Administration by creditor on behalf of himself
and all other creditors**

(Title)

A. B., the above-named plaintiff, states as follows—

1. That E. F., late of , was at the time of his death in debt and his estate is indebted to the plaintiff in the sum of [here mention nature of debt and security, if any].

2. That E. F., died on or about the day of 19 . By his last will, dated the day of 19 , he appointed C. D., his executor [or devised his estate in trust, etc.] or died intestate, [as the case may be].

3. That the will was proved by C. D. [or letters of administration were granted, etc.]

4. That the defendant has possessed himself of the movable [and immovable, *or* the proceeds of the immovable] property of *E. F.* and has not paid the plaintiff his debt.

[*As in paras 4 and 5 of Form No. 1*]

Relief

The plaintiff claims that an account may be taken of the movable [and immovable] property of *E. F.*, deceased and that the same may be administered under the decree of the Court.

Verification

69. Administration by special legatee

Title

[*Alter Form No. 68 thus*]

[*Omit paragraph 1 and commence paragraph 2*]

That *E. F.*, late of died on or about the day of 19 . By his last will dated the day of 19 , he appointed *C. D.*, his executor and bequeathed to the plaintiff, [*here state the specific legacy*].

For paragraph 4 substitute

That the defendant is in possession of the movable property of *E. F.*, and amongst other things, of the said [*here name the subject of the specific bequest*].

For the commencement of Relief substitute

The plaintiff claims that the defendant may be ordered to deliver to him the said [*here name the subject of the special bequest*], or that, etc.

Verification

70. Administration by Pecuniary Legatee

(Title)

E. F., the above-named plaintiff states as follows—

1. That *A. B.* of *K*, in the died on the day of 19 . By his last will, dated the day of 19 , he appointed the defendant and *M. N.* [who died in the testator's lifetime] his executors, and bequeathed his property, whether movable or immovable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life ; and after his decease, and in default of his having a son who should attain twenty one years of age, or a daughter who

should attain that age or marry, upon trust as to his immovable property for the person who would be the testator's heir-at-law, and as to his movable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. That the will was proved by the defendant on the day of 19 . The plaintiff has not been married.

3. That the testator was at his death entitled to movable and immovable property ; the defendant entered into the receipt of the rents of the immovable property and got in the movable property ; he has sold same part of the immovable property.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims—

(1) to have the movable and immovable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken ;

(2) such further or other relief as the nature of the case may require.

Verification

— — —

71. For possession under section 9 Specific Relief Act

(Title)

A. B., the above-named plaintiff states as follows—

1. That upto the day of 19 , the plaintiff was in possession of the property described below:

Description of the Property.

✱

✱

✱

2. That on the day of 19 , the defendant dispossessed the plaintiff of the said property without the latter's consent and otherwise than in due course of law.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims recovery of the possession of the said property.

Verification

— — —

72. For Pre-emption*(Title)*

A. B., the above-named plaintiff states as follows—

1. That on the _____ day of _____ 19____, by a sale-deed one X, sold for Rs. _____, a house detailed below to the defendant for Rs. _____.

Description of the house.

*

*

*

2. That the plaintiff and the vendor are both Sunni Mohammadans.

3. That the plaintiff is the owner of a house adjoining and to the east of the said house and thus is a *shafi-i-jar* and the defendant's right is not superior or equal to that of the plaintiff.

4. That on the _____ day of _____ 19____, as the plaintiff came to know of the sale, he immediately declared his intention to pre-empt the said house and thus made Talab-i-Movasibat.

5. That the same day i. e. the _____ day of _____ 19____, the plaintiff made a confirmatory demand talab-i-Ishhad on the said house in the presence of H and N, the two witnesses.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims the possession of the said house on payment of Rs. _____.

Verification

— — —

73. For Declaration of Title*(Title)*

A. B., the above-named plaintiff states as follows—

1. That the plaintiff is the owner of a house described below and is, and has been, in possession thereof as such owner.

2. That the defendant moved an application to the _____ that he was the owner of the house and that the plaintiff was his tenant and that officer on _____, 19____, ordered that the defendant be recorded in the records as the owner of the said house.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims that by a declaration he be declared the owner of the said house.

Verification

— — —

74. Suit under O. 21, R. 63, C. P. C. by a Decree-Holder
(Title)

A. B., the above-named plaintiff, states as follows—

1. That one Mr. Desh Raj is the owner of the property described below.

Description of the property.

*

*

*

2. That the plaintiff attached the said property in the execution of the decree No. 110 of 1963, passed against the said Mr. Desh Raj.

3. That the defendant raised claim to the said property and the Court decreed the claim and released from attachment the said property by an order dated the _____ day of _____ 19____.

[As in paras 4 and 5 of Form No. 5]

Relief

The plaintiff claims that the said property is liable to attachment and sale in the execution of his said decree.

Verification

— — —

75. Suit for setting aside a transfer to defeat Creditors
(Title)

1. That the plaintiff No. 1 is the holder of a decree No. 310 of 1962 passed by the City Munsif, Saharanpur for Rs. 3000/- against the defendant No. 1 and the plaintiff No. 2 has a debt of Rs. 2000/- under a promissory note dated 2nd September, 1961, from the said defendant No 1.

2. That with the intention of defeating the claims of the plaintiffs, the defendant No. 1 has fraudulently transferred the whole of his immovable property described in annexure to the plaint, by a gift deed dated 10th November, 1962 in favour of his brother, the defendant No 2.

3. That the plaintiff came to know of the said transfer on 15th November, 1962 when a notification of mutuation was published in the village.

[*As in paras 4 and 5 of Form No. 5*]

Relief

The plaintiffs pray that the said transfer be declared null and void against the plaintiffs.

Verification

II. WRITTEN STATEMENTS

General Defences

Denial.—The defendant denies that (*set out facts*) .

The defendant does not admit (*set out facts*) .

The defendant admits that but says that .

Protest.—The defendant denies that he is a partner in the defendant firm of .

The defendant denies that he made the contract alleged or any contract with the plaintiff.

The defendant denies that he contracted with the plaintiff as alleged or at all.

The defendant admits assets but not the plaintiff's claim.

The defendant denies that the plaintiff sold to him the goods mentioned in the plaint or any of them.

Limitation.—The suit is barred by article or article of the Second Schedule to the Indian Limitation Act, 1877.

Jurisdiction.—The Court has no jurisdiction to hear the suit on the ground that (*set forth the grounds*).

On the day of 19, a diamond ring was delivered by the defendant to and accepted by the plaintiff in discharge of the alleged cause of action.

Insolvency.—The defendant has been adjudged an insolvent.

Minority.—The defendant was a minor at the time of making the alleged contract.

Payment into Court.—The defendant as to the whole claim (*or as to Rs.* , part of the money claimed, or *as the case may be*) has paid into Court Rs. and says that this sum is enough to satisfy the plaintiff's claim [*or the part aforesaid*].

Performance remitted.—The performance of the promise alleged was remitted on the (*date*).

Rescission.—The contract was rescinded by agreement between the plaintiff and the defendant.

Res judicata.—The plaintiff's claim is barred by the decree in suit (*give the reference*).

Estoppel.—The plaintiff is estopped from denying the truth of (*insert statement as to which estoppel is claimed*) because (*here state the facts relied on as creating the estoppel*).

Grounds of defence subsequent to institution of suit.—Since the institution of the suit, that is to say, on the day of (set out facts).

1. Written Statement in Reply to Plaint No. 1 Inter-Pleader suit)

In the Court of City Munsif
Meerut

Suit No. 10 of 1964

X, son of Y resident of 191 Thaper Nagar, Meerut

Plaintiff.

V.

A, son of B, resident of 169, Swamipara Meerut

Defendant No. 1.

and

C, son of D resident of 41 Moripara, Meerut

Defendant No. 2.

Writin Statement on behalf of Defendant No. 1.

1. Para 1 of the plaint is admitted.
2. Para 2 of the plaint is admitted.
3. Para 3 of the plaint is admitted
4. Para 4 of the plaint is not admitted.

C, the defendant No. 2 has no order from M to X for transferring the amount of Rs. 4000/- to him.

5. Para 5 of the plaint is admitted.
6. Para 6 of the plaint is not within the knowledge of the defendant No. 1.
7. Para 7 of the plaint is admitted.
8. Para 8 of the plaint is legal and as such requies no admission or denial.

9. Para 9 of the plaint is legal and as such requires no admission or denial.

It is prayed that the said amount of Rs. 5000/- be paid to the defendant No. 1 and the claim of defendant No. 2 be dismissed.

I, A, the defendant No. 1, do verify that the contents of the paras 1 to 7 of the above written statement are true to my personal knowledge and of paras 8 and 9 are believed by me on the information received to be correct.

Verified this 30th day of January, 1964.

(Sd.) A.

Defendant No. 1.

Through Shri K. N. Kapoor,

Advocate, Meerut.

2. Written Statement on Behalf of C, the defendant

In the Court of City Munsif, Meerut

Suit No. 10 of 1964

X, son of Y, resident of 191, Thaper Nagar, Meerut

Plaintiff.

V.

A, son of B, resident of 169, Swamipara, Meerut

Defendant No. 1.

and

C, son of D, resident of 41 Moripara, Meerut

Defendant No. 2.

Written statement on behalf of defendant No. 2, is as follows —

1. The contents of para 1 of the plaint are admitted.
2. The contents of para 2 of the plaint are admitted.
3. The contents of para 3 of the plaint are not admitted. The assignment from M under whom the defendant no. 1 claims the amount is not genuine. It is forged. The signature of M on the assignment deed is forged.
4. The contents of para 4 of the plaint are admitted.
5. The contents of para 5 of the plaint are not admitted. The plaintiff believes that the amount belongs to the

defendant No. 1 and on this belief has entered into an agreement with the defendant No. 1 that in case the latter succeeds, he would give a sum of Rs. 1000/- to the plaintiff.

6. The contents of para 6 are not within the knowledge of the defendant no. 2.

7. The contents of para 7 of the plaint are not admitted. As pointed above, the plaintiff has entered into a collusion with the defendant No. 1, that in case the latter succeeds in establishing his claim, he would give Rs. 1000/- to the plaintiff.

8. Para 8 of the plaint is legal and therefore requires no admission or denial.

9. Para 9 of the plaint is legal and therefore requires no admission or denial.

It is prayed that the claim of defendant no. 1 be dismissed and the defendant No. 2 be paid the amount deposited with the plaintiff.

I, C, the defendant No. 2, do verify that the contents of paras 1 to 7 of the above written statemant are true to my personal knowledge and the contents of paras 8 and 9 are believed by me on the information received to be correct.

Verified this 28th day of January, 1964.

(Sd.) C.

Ddefendant No. 2.

Through Shri K. G. Mittal,

Advocate, Meerut.

2. Malicious Prosecution

(In reply to Plaint No. 2)

In the Court of Munsif, Meerut

Suit No. 362 of 1963

A, son of B, resident of Mohalla Vijay Nagar, Meerut.

..... Plaintiff.

V.

1. X } sons of Z residents of 118, Thapar Nagar,
2. Y } Meerut. Defendants.

Written statement on behalf of the above-named defendants is as follows—

1. That the contents of para 1 of the plaint are admitted,

2. That the contents of para 2 of the plaint are admitted.
3. That the contents of para 3 of the plaint are admitted.
4. That the contents of para 4 of the plaint are denied.
5. That the contents of para 5 of the plaint are not admitted.
6. That the para 6 of the above plaint is legal and, therefore, does not require any admission or denial.
7. That the para 7 of the plaint is admitted.
8. That the para 8 of the plaint is admitted.
9. That the para 9 of the plaint is not admitted and the plaintiff is not entitled to any relief.

Additional Pleas

10. That the defendants established their case in the Court of Sessions Judge, Meerut, but the plaintiff was acquitted on the benefit of doubt whether A could have arrived at the scene of occurrence as alleged by the prosecution.

11. That there had been long standing enmity between the plaintiff and the defendant, which prompted the plaintiff to murder the defendant No. 1 and now when he has been acquitted, he has instituted this present suit.

12. That the Court-fee paid by the plaintiff is insufficient.

13. That for the reasons stated above the suit is liable to be dismissed.

I, A, defendant do verify that the contents of paras 1 to 12 of the above written statement are true to my personal knowledge and of para 13 on the information received to be correct.

Verified at Meerut this 16th day of December, 1963.

(Sd.) A.

Defendant.

Through Shri Dharam Veer Premi,

Advocate, Meerut.

3. Defence in suits for goods sold and delivered

1. That the defendant did not order the goods.
2. That the goods were not delivered to the defendant.
3. That the price was not Rs.

[or]

| | | |
|---|-----------|---|
| <div style="display: flex; align-items: center;"> <div style="margin-right: 5px;"> 4. } 5. } 6. } </div> <div>Except as to Rs.</div> </div> | , same as | <div style="display: flex; align-items: center;"> <div style="margin-right: 5px;"> { 1. 2. 3. </div> </div> |
|---|-----------|---|

7. That the defendant [*or A. B., the defendant's agent*] satisfied the claim by payment before suit to the plaintiff [*or to C, D., the plaintiff's agent*] on the day of 19 .

8. That the defendant satisfied the claim by payment after suit to the plaintiff on the day of 19 .

4. Defence in suits on bonds

1. That the bond is not the defendant's bond.

2. That the defendant made payment to the plaintiff on the day according to the condition of the bond.

3. That the defendant made payment to the plaintiff after the day named and before suit of the principal and interest mentioned in the bond.

5. Defence in suits on guarantees

1. That the principal satisfied the claim by payment before suit.

2. That the defendant was released by the plaintiff giving time to the principal debtor in pursuance of a binding agreement.

6. Defence in any suit for debt

1. That as to Rs. 200 of the money claimed, the defendant is entitled to set off for goods sold and delivered by the defendant to the plaintiff.

Particulars are as follows—

| | | | Rs. |
|------------------|-----|-----|-----|
| 1963, June, 23rd | ... | ... | 100 |
| „ August, 22nd | ... | ... | 100 |
| Total | | | 200 |

2. That as to the whole [*or as to Rs.*], part of the money claimed] the defendant made tender before suit of Rs. and has paid the same into Court.

7. Defence in suits for injuries caused by negligent driving

1. That the defendant denies that the carriage mentioned in the suit was the defendant's carriage, and that it was under the charge or control of the defendant's servants. The carriage belonged to of street, Meerut, livery stable

keepers employed by the defendant to supply him with carriages and houses ; and the person under whose charge and control the said carriage was, the servant of the said .

2. That the defendant does not admit that the said carriage was turned out of Jawahar Quarters either negligently, suddenly or without warning, or at a rapid or dangerous pace.

3. That the defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. That the defendant does not admit the statements contained in the third paragraph of the plaint.

— — —

8. Defence in all suits for wrongs

1. Denial of the several acts (or matters) complained of.

— — —

9. Defence in suits for detention of goods

1. That the goods were not the property of the plaintiff.
2. That the goods were detained for a lien to which the defendant was entitled. Particulars are as follows—

1963, June 2nd. To carriage of the goods claimed from Meerut to Saharanpur.

80 Quintals at Rs. 2 per Quintal.....Rs. 160.

• — — —

10. Defence in suits for infringement of copyright

1. That the plaintiff is not the author [*assignee etc.*].
2. That the book was not registered.
3. That the defendant did not infringe.

— — —

11. Defence in suits for infringement of Trade Mark

1. That the trade mark is not the plaintiff's.
2. That the alleged trade mark is not a trade mark.
3. That the defendant did not infringe.

— — —

12. Defence in suits Relating to Nuisances

1. That the plaintiff's rights are not ancient [*or deny his other alleged prescriptive rights*].
2. That the plaintiff's rights will not be materially interfered with by the defendant's buildings.

3. The defendant denies that he or his servants pollute the water [or do what is complained of].

[If the defendant claims the right by prescription or otherwise to what is complained of, he must say so, and must state the grounds of the claim, i. e. whether by prescription, grant or what.]

4. That the plaintiff has been guilty of laches of which the following are the particulars—

1950. Plaintiff's mill began to work.

1951. Plaintiff came into possession.

1962. First complaint.

5. That as to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says the acts complained of have not produced any damage to the plaintiff: *[If other grounds are relied on, they must be stated, e. g., limitation as to past damage].*

— — —

13. Defence to suit for foreclosure

1. That the defendant did not execute the mortgage.

2. That the mortgage was not transferred to the plaintiff. *[If more than one transfer is alleged, say which denied.]*

3. That the suit is barred by article _____ of the Second Schedule to the Indian Limitation Act, 1963.

4. That the following payments have been made, viz.—

| | | | |
|------------------|-----|-----|-------|
| | | | Rs. |
| (Insert date)——, | ... | ... | 1000. |
| (Insert date)——, | ... | ... | 800. |

5. That the plaintiff took possession on the _____ of _____, and has received the rents ever since.

6. That the plaintiff released the debt on the _____ day of _____.

7. That the defendant transferred all his interest to A. B. by a document, dated _____.

— — —

14. Defence to suit for redemption

1. That the plaintiff's right to redeem is barred by article _____ of the Second Schedule to the Indian Limitation Act, 1908.

2. That the plaintiff transferred all interests in the property to A. B.

3. That the defendant, by a document dated the day of , transferred all his interests in the mortgage debt and property comprised in the mortgage to A. B.

4. That the defendant never took possession of the property, or received the rents thereof.

[If the defendant admits possession for a time only, he should state the time and deny possession beyond what he admits.]

— — —

15. Defence to suit for specific performance

1. That the defendant did not enter into the agreement.

2. That A. B. was not the agent of the defendant (*If alleged by the plaintiff.*)

3. That the plaintiff has not performed the following conditions—(*conditions*).

4. That the defendant did not—(*alleged acts of part performance*).

5. That the plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matter—(*state why*).

6. That the agreement is uncertain in the following respects—(*state them*).

7. (*or*) That the plaintiff has been guilty of delay.

8. (*or*) That the plaintiff has been guilty of fraud (*or misrepresentation*).

9. (*or*) That the agreement is unfair.

10. (*or*) That the agreement was entered into by mistake.

11. The following are particulars of (7), (8), (9), (10) (*or as the case may be*).

12. That the agreement was rescinded under conditions of sale, No. 11 (*or by mutual agreement*).

[In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whether other ground of defence he intends to rely on e. g., the Indian Limitation Act, accord and satisfaction, release, fraud, etc.]

— — —

16. Defence in administration suit by pecuniary legatee

1. That A. B's will contained a charge of debts; he died insolvent; he was entitled at his death to some immovable property which the defendant sold and which produced the net

sum of Rs. , and the testator had some movable property which the defendant got in, and which produced the net sum of Rs. .

2. That the defendant applied the whole of the said sums and the sum of Rs. which the defendant received from rents of the immovable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. That the defendant made up his accounts and sent a copy thereof to the plaintiff on the day of 19 , and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. That the defendant submits that the plaintiff ought to pay the costs of the suit.

— — —

17. Defence to a suit for dower

1. The defendant admits the allegation in para 1, of the plaint of the plaintiff's marriage with the defendant but does not admit that the dower fixed was Rs. . The defendant says that the dower fixed was only Rs. , out of which Rs. was prompt.

2. The defendant admits each of the plaintiff's allegation in paras 2, 4 and 5 of the plaint.

3. The defendant denies the allegation contained in para 3 of the plaint that inspite of plaintiff's demand, the dower debt has not been paid.

4. On the day of 19 , the plaintiff demanded from the defendant her prompt dower and in , 19 , the defendant paid her Rs. , on account of her prompt dower debt.

5. In the alternative the defendant says that the defendant refused to pay the plaintiff her prompt dower in , 19 , and claim for the same now is barred by article of the Schedule to the Indian Limitation Act, 1908.

— — —

18. Defence in a suit for Ejectment

1. The defendant admits the plaintiff's tenancy but does not admit that the tenancy was for a period of five years. The said tenancy was for a period of seven years.

2. The defendant admits that the rent has not been paid to the plaintiff. But the same was paid to the plaintiff on day

of 19 , which the plaintiff refused to accept. The defendant deposited in the Court the sum of Rs. on account of rent on , 19 .

19. Defence in a suit for Wroful Dismissal

1. The defendant admits the allegations in paras 1 and 2 of the plaint.

2. The defendant admits the allegation in para 3 of the plaint that the defendant dismissed the plaintiff and did not permit him to serve for the full term of two years but denies that the dismissal was wrongful.

3. When the defendant employed the plaintiff, the plaintiff represented that he fully knew the preparation of accounts and that he was an experienced hand. But during the course of working the defendant found that the plaintiff knew nothing about the accounts and that the plaintiff was a raw hand.

20. Defence to a redemption suit

1. The defendant denies the plaintiff's allegation in the para 1 of the plaint that the plaintiff is the mortgagor and the defendant is the mortgagee of the property in the suit.

2. The defendant does not admit the allegation in para 2 of the plaint of the deposit of mortgage money or the service of notice upon the defendant by the Court.

3. The suit is not maintainable as the mortgage money has not been tendered by the plaintiff.

4. The mesne profits claimed by the plaintiff are excessive.

21. Defence in a suit on a Promissory Note.

1. The defendant admits the plaintiff's allegation that on the day of 19 , the defendant executed a promissory note for Rs. , and that the defendant has not paid or any part of the same to the plaintiff.

2. The defendant denies that the interest payable on the said promissory note was 2 per cent per mensem. The interest as originally written in the promissory note was 2 per cent per annum which has been manipulated by the plaintiff into 2 per cent per mensem. Hence no suit is maintainable on the said promissory note.

22. Defence in a suit for Dissolution of Partnership

1. The defendant admits the allegation of the partnership agreement in para 1 of the plaint.

2. The defendant admits the advancing of loan of Rs. , to his uncle and the borrowing of Rs. , from the Punjab National Bank Ltd., Sadar Bazar, Meerut, but denies that those both acts amounted to misconduct. Both the two acts were done with the prior consent and approval of the partners.

— — —

23. Defence in a suit against railway for Delay in Delivery

1. The defendant admits the allegations in paras 1 and 2 of the plaint.

2. The defendant denies that the usual and reasonable period of transit by goods train from Meerut to Kanpur is 4 days ; it is 6 days.

3. The delay in delivery was not due to the negligence of the defendant, but was due to the plaintiff's illegibly addressing the parcel ; Kanpur was actually read as Rampur.

— — —

24. Defence to a suit for price of goods sold

1. The defendant admits the sale and purchase of the one hundred barrels of flour as alleged in para 1 of the plaint.

2. The defendant denies the plaintiff's allegation in para 2 of the plaint that the price of the goods was to be paid on delivery. The price of the goods was agreed to be paid when the defendant was able to sell the goods.

3. The defendant further says that 10 barrels of flour did not correspond to the sample given to the defendant on the day of 19 .

— — —

25. Defence in a suit for price of articles prepared on order

1. The defendant admits the allegations in para 1 of the plaint.

2. The defendant admits allegations in para 2 of the plaint that the plaintiff made six tables and fifty chairs and offered to deliver them to the defendant but denies that they were of the specifications ordered to. Besides, the tables and chairs were not of the size ordered to ; they were made of the wood of the mango tree and not of the wood of the babool tree as agreed upon.

26. Defence in a suit for bite of defendant's dog

1. The defendant admits the allegation in para 1 of the plaint.

2. The defendant admits the allegation in para 2 of the plaint that on the day of 19 , the defendant's dog bit the plaintiff, but denies that the dog attacked and bit the plaintiff without any cause. The plaintiff had struck the dog with a *lathi* in response to which the dog attacked the plaintiff.

3. The defendant denies the allegation in para 3 of the plaint that the defendant knew that the dog was of fierce and mischievous nature. The dog has always been calm and quiet and not on a single occasion before the incident had attacked or bit anybody.

— — —

27. Defence in a suit for damages for wrongful arrest before judgment

1. The defendant admits allegations in paras 1 and 2 of the plaint.

2. The defendant denies the allegation in para 3 of the plaint that the defendant procured order for the arrest of the plaintiff without any reasonable and probable cause and that the defendant knowingly made a false allegation that the plaintiff had left the local limits of the jurisdiction of the Court. The defendant had a reasonable cause for moving the application; the reasonable cause being the information given by the defendant's neighbour *M* to the defendant on the day of 19 , that the plaintiff had left the local limits of the jurisdiction of the Court. The defendant believed the information to be true.

— — —

28. Defence in a suit for obstructing a right of way

1. The defendant admits the allegation in para 1 of the plaint.

2. The defendant denies the allegation in para 2 of the plaint. The plaintiff has never enjoyed the alleged right of way for 20 years or at any time within two years of the institution of the instant suit.

3. In the alternative, if the plaintiff has so enjoyed the alleged right of way, the plaintiff has enjoyed the right secretly without the knowledge of the defendant and not as of right.

4. The defendant admits the defendant's obstructing the right of way, but denies that the said obstruction was wrongful.

— — —

29. Defence to a suit for Injuries received in a Railway collision

1. That the defendant admits the allegations in paras 1 and 2 of the plaint.

2. That the defendant denies the allegations in para 3 of the plaint that the collision was caused by the negligence of the defendant's servants.

3. That the collision was the result of the inevitable accident (state the facts which render the collision a result of the inevitable accident).

30. Defence to a suit for setting aside a Father's Alienation

1. That the defendant admits the allegations in paras 1, 2 and 4 of the plaint.

2. That the defendant denies the allegation in para 3 of the plaint that the property in suit was the joint family property in which the plaintiff had any interest. The property was the separate property of the defendant No. 2.

3. The defendant denies the allegation in para 5 of the plaint that the mortgage was made without any legal necessity and that there was no necessity for borrowing money at such a high rate of interest.

4. That the property was mortgaged to meet the expenses of the marriage of Santosh, daughter of defendant No. 2.

31. Defence in wife's suit for maintenance

1. The defendant admits the allegation in para 1 of the plaint.

2. The defendant admits the allegation in para 2 of the plaint that he married a second wife but denies the allegation that the defendant without any justification turned the plaintiff out of his house.

3. That the plaintiff had been leading an unchaste life and when the defendant asked the plaintiff about her unchaste life, she voluntarily and without the defendant's consent left the defendant's house and has refused to return to the defendant's house. In such circumstances she is not entitled to any maintenance.

4. That the plaintiff is still leading an unchaste life. She has illicit connection with one Sri Ram and has given birth to a child, off spring of such illicit connection.

32. Defence in a suit for restitution of conjugal rights

1. That the defendant admits the allegation in para 1 of the plaint that she is the wife of the plaintiff.

2. That the defendant does not admit the allegation in para 2 of the plaint that she has refused to come to the plaintiff's place without any lawful excuse.

3. That the defendant left the plaintiff's place on account of the plaintiff's cruelty and still she apprehends that her life would be in danger if she returns to the plaintiff's place.

4. (*State the particulars of the plaintiff's cruelty*).

33. Defence in a suit for pre-emption

1. That the defendant admits the allegation in paras 1 and 2 of the plaint.

2. That the defendant admits the allegation in para 3 of the plaint, that the plaintiff is a *shafi-i-jar*, but denies that the defendant has no superior right to that of the plaintiff. The defendant owns a house to the west of the house in dispute and has a window in a *Sehan* land appertaining to the latter house, and is, therefore, a *Shafi-i-khalit*.

3. That the defendant does not admit the allegation in para 4 of the plaint that immediately after the plaintiff came to know about the sale, the plaintiff declared his intention to exercise the right of pre-emption.

4. That the defendant denies the allegation in para 5 of the plaint that the plaintiff made *talab-i-Ishhad* on the house in dispute in the presence of *H* and *N*, the two witnesses.

34. Defence in a suit for declaration of title

1. That the defendant denies the allegation in para 1 of the plaint that the plaintiff is the owner of the house in the suit.

2. That the defendant denies the allegation that the plaintiff is in possession of the said house. The defendant is in possession of the said house, and as such the plaintiff's suit for declaration of title to the house, is not maintainable.

35. Defence in a suit under O. 21, R. 63, C. P. C.

1. That the defendant denies the allegation in para 1 of the plaint that the plaintiff is the owner of the property in the suit.

2. That the defendant admits the allegations in paras 1 and 2 of the plaint.

(iii) MISCELLANEOUS APPLICATIONS**1. Application for transfer of decree for execution under section 39 (b), C. P. C.**

In the Court of Civil Judge Meerut

A son of *B*, resident of 102, Saket Meerut.

Applicant

V.

H son of *M*, resident of 93, Mansarover Meerut

Opposite party

A, the above-named applicant states as follows—

1. The applicant is the holder of a decree passed by this Court in Suit No. 602 of 1963.

2. The opposite party against whom the said decree has been passed has no property within the local limits of the jurisdiction of this court sufficient to satisfy the said decree and has property within the local limits of the jurisdiction of the Senior Subordinate Judge of Saharanpur.

(or the said decree directs the sale (or delivery) of immovable property which is not situate within the local limits of the jurisdiction of this court but lies within the local limits of the jurisdiction of the Senior Subordinate Judge of Saharanpur)

(or the person against whom the said decree has been passed actually and voluntarily resides (or carries on business, or personally works for gain) within the local limits of the jurisdiction of the Senior Subordinate Judge Saharanpur).

The applicant, therefore, prays that the said decree be transferred for execution to the court of District Judge, Saharanpur.

(Sd) *A*.

The Applicant.

Through Shri Dharam Veer Premi, Advocate, Meerut.

2. Application under section 47 C. P. C.

(Title)

A son of *B*

Objector (Judgment-debtor)

V.

X son of *Y*

Opposite Party (Decree-holder)

A, the above-named objector raises the following objections to the execution application of the opposite party—

1. That the decree-holder's previous application for execution was not *bona fide* but simply for the purpose of limitation. The present application for execution, therefore, is not in time and barred by limitation.

2. That the decree does not allow the further interest claimed by the decree-holder.

3. That the objector is an agriculturist and as such his house cannot be attached in the execution of the decree. The house of the objector attached by the decree-holder should be released.

The objector prays that the above-said objections be allowed.

(Sd.) A.

The Applicant.

— — —

3. Application under section 95, C. P. C.

(Title)

A. B., the above-named applicant says—

1. That the plaintiff applied for and obtained an order for the arrest of the applicant before judgment in Suit No. 102 of 1962 on 1st June, 1962 and the applicant under the said order was arrested on 5th June, 1962.

2. That the said application was moved on insufficient grounds and that there was no reasonable or probable ground for instituting the same. The ground given by the plaintiff was that the applicant was going to leave the local limits of the jurisdiction of the Court.

3. The applicant had no such intention of leaving the local limits of the jurisdiction of the Court.

The applicant prays that Rs. 500/- be awarded to him as compensation for his said arrest before judgment on insufficient grounds.

(Sd.) A. B.

The Applicant.

— — —

4. Application under section 144, C. P. C.

(Title)

A. B., the above-named applicant states as follows—

1. That on the 20th day of November, 1962, the opposite party obtained from this court a decree (No. 802 of 1962) against the applicant for the possession of a house described below—

Description of the house

*

*

*

2. That on 2nd December, 1962, the opposite party in execution of the said decree took possession of the said house.

3. That on 1st November 1963, the said decree of this court was set aside by the the District Judge, Meerut in Appeal No. 410 of 1963.

The applicant claims by way of restitution—

(1) the possession of the house taken in the execution of the decree, and

(2) Rs. 200/- on account of mesne profits as per account given in schedule annexed to this application.

(Sd.) A. B.

The Applicant.

5. Application under O. 1, R. 8, C. P. C.

(For representative Suit)

(Title)

The applicants state as follows—

1. That the applicants are the members of the Seva Samiti Thaper Nagar, Meerut.

2. That the members of the said Samiti are about 40 in number.

3. That the applicants want to bring a suit against the Cantonment Board, Meerut and pray for permission for the same under O. 1, R. 8, C. P. C.

6. Application under O. 5, R. 20, C. P. C.

(For Substituted Service)

(Title.)

[The number and cause-title of the suit in connection with which substituted service is demanded should be given].

1. In the above case the defendant is keeping out of the way for the purpose of avoiding service of summons.

2. The applicant prays that substituted service of the summons be ordered by the Court in the manner the Court thinks fit.

Affidavit

1. *I, A.*, declare on oath that the summons in the above case was first taken out on the defendant at his house in Thaper Nagar Meerut, and was returned unserved with the report that the defendant had gone to Modinagar.

2. *I, A.*, declare on oath that when the summons was taken out for Modinagar, the summons again was returned unserved with the report that the defendant had returned to his house in Thaper Nagar Meerut.

3. *I, A.*, declare on oath that the summons served on the defendant by post was returned with postman's remark "refused".

4. *I, A.*, declare on oath and believe that the defendant has been intentionally keeping out of the way to avoid the service of summons.

7. Application for Rejection of Plaint

(Number and cause-title of the suit)

A. B., the above-named defendant says—

1. That this is a suit for the cancellation of a sale-deed on the ground that the said sale deed was procured by misrepresentation.

2. That in para 3 of the plaint, the plaintiff has simply given that the sale deed had been procured by misrepresentation but has not furnished particulars of misrepresentation required under O. VI, R. 4, of C. P. C.

The defendant, therefore, prays that as the plaint does not disclose any cause of action, it should be rejected.

8. Application Under O. 9, R. 3, C.P.C.

(For setting aside an order of dismissal of the suit)

(Number and cause-title of the suit)

1. That on the morning of the date fixed for the hearing of the above suit, the applicant was suddenly attacked by fever which prevented him from attending the Court on the date fixed for the hearing of the suit.

2. The applicant prays that the order of dismissal of the suit dated 3rd January, 1964, be set aside.

9. Application under O. 9, Rule 13, C. P. C.

(For setting aside an ex parte decree)

(Number and cause-title of the suit)

1. The applicant was defendant in the above suit and an *ex parte* decree was passed against him on December 30, 1963.

2. The summons for the final hearing of the suit issued on the defendant was not served upon him.

The applicant, therefore, prays that the *ex parte* decree be set aside.

Affidavit

I declare on oath that no summons was served upon me in the above suit.

— — —

10. Application under O. 11, R. 1, C. P. C.

(For leave to deliver interrogatories)

(Number and cause-title of the suit)

The applicant prays that the interrogatories annexed herewith be delivered to the defendant for being answered within 10 days of the receipt thereof.

— — —

11. Application under O. XI, R. 12, C. P. C.

(For discovery of documents)

[Number and cause-title of the suit]

1. One of issues between the parties in this case is whether the defendant appointed the plaintiff his agent for purchase in Delhi.

2. Another issue between the parties in this case is whether on 5th July, 1963, the defendant asked the plaintiff to purchase hundred barrels of flour for the defendant.

3. For the fair disposal of the case, the discovery of documents relating to these matters is necessary.

The defendant prays that the plaintiff by an order of the Court be directed to make discovery on oath of the documents which are or have been in his possession or power relating to any of the issues given in paras 1 and 2 of the application.

— — —

12. Application under O. XXI, R. 2 (2) C. P. C.

(For certifying payment out of Court to decree-holder)

1. That the applicant is the judgment-debtor in decree No. 306 of 1963 passed by this Court.

2. That on September 21, 1963, the applicant paid to the decree-holder, out of court a sum of Rs. 1000/- in part payment of the decree.

3. That the decree-holder has not certified the said amount paid, to the Court.

The applicant prays that, after notice to the decree-holder, the said amount be certified.

13. Application for claim under O. XXI, R. 58

A. s/o B.

Claimant

V.

(1) *D. s/o E.*

(Decree-holder)

(2) *M. s/o N.*

(Judgment-debtor)

Opposite parties.

A., the above-named claimant states as follows—

1. That the opposite party no. 1 has attached (among other) a shop described below in execution of a decree No. 10 of 1963 in this Court against the opposite party no. 2.

2. That the said shop belongs to the claimant.

3. That the said shop when attached was in the possession of opposite party no. 2 as claimant's tenant.

The claimant prays that the said shop be released from attachment.

14. Application under O. XXI, R. 89, C. P. C.

(For setting aside sale on deposit)

(Title)

1. That the applicant is the judgment-debtor and owner of the house which has been sold by auction in the above execution sale.

2. That the said auction took place on 20th December, 1963.

3. The applicant deposits :

(i) For purchaser, opposite party no. 2—Rs. 300/-.

(ii) For the decree-holder, opposite party no. 1—Rs. 15,000/-, the amount entered in the sale proclamation.

The applicant prays that the said sale be set aside.

15. Application under O. XXI, R. 90, C. P. C.

(For setting aside sale on ground of fraud)

(Title)

1. That the applicant was the owner of the house (described at the foot of this application) sold in the above execution case.

2. That the house was worth Rs. 50,000/- but it has been sold for Rs. 30,000/- only.

3. That the sale of the house at such a low bid was due to the fraud of the decree-holder.

4. That on the morning of 30th December 1963, the date fixed for sale, the decree-holder told Shyam Behari and Krishan Behari, the intending purchasers that the sale had been postponed for some other date and thus prevented them from bidding at sale. The information given was false and fraudulent to the knowledge of the decree-holder. The result was that only three persons attended the sale and the decree-holder could purchase the house at a low bid.

The applicant, prays, that the said sale of the house be set aside.

16. Application under O. XXI, R. 91, C. P. C.

(For setting aside sale on ground of judgment-debtor having no saleable interest)

1. That the applicant was purchaser of a Fiat Car No. U. S. L. 1214 at an auction sale held by the Collector of Muzaffarnagar on December 20, 1963, in execution of decree No. 316 of 1963 of this Court.

2. That the judgment-debtor Shashi Kapoor had no saleable interest in the said car on the date of the said sale as by a sale-deed dated November 30, 1963, the judgment-debtor had sold the said car to one Mr. Atal Behari.

The applicant prays that the said sale be set aside.

17. Application under O. XXI, R. 100

(Dispossession by a purchaser)

1. That the applicant is the owner of the house described at the foot of the application.

2. That the opposite party purchased the said house in execution of decree no. 210 of 1963 passed by this Court.

3. That the applicant was no party to the said decree.

4. That on December 18, 1963, the opposite party took possession of the said house through the Court and dispossessed the applicant.

The applicant prays that he may be put into possession of the said house.

18. Application under O. XXIII, R. 1, C. P. C.

(For withdrawal of a case with liberty to bring a fresh suit)

1. That this suit is vitiated by the defect of misjoinder of defendants and causes of action and unless the defect is removed, the suit must fail.

2. The plaintiff prays that he may be allowed to withdraw the claim in respect of plot No. 1 against the defendant No. 3 with permission to institute a fresh suit in respect of the said plot against the said defendant No. 3.

19. Application to sue as a Pauper

For obtaining permission to sue as a pauper, the plaintiff need not move a separate application. He should draw the plaint and add the following paragraph as the last paragraph before prayer for relief—

“The plaintiff is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in this suit and, therefore, prays for leave to sue as a pauper. The property possessed by the applicant is given in the annexure to the application.”

20. Application under O. XXXIX, R. 1, C. P. C.

(For temporary injunction)

In the Court of City Munsif Saharanpur

A son of B resident of 10, Rani Bazar, Saharanpur

Plaintiff-Applicant

V.

X son of Y resident of 15, Rani Bazar, Saharanpur.

Defendant-Opposite Party

A, the above-named plaintiff-applicant states as follows—

1. That the plaintiff is the owner of a plot of land, detailed at the foot of the application, adjacent to the defendant's house.
2. That on November 15, 1963, the defendant has taken wrongful possession of the said plot of land and has started construction thereon inspite of plaintiff's request not to do so.
3. That the applicant has filed this suit for the demolition and recovery of the possession of the said plot of land.
4. That in case the defendant is not restrained by a temporary injunction from raising construction, the plaintiff-applicant will suffer an irreparable loss.
5. That the issue of a temporary injunction is indispensable in the interest of justice.
6. That the plaintiff-applicant has also a sale-deed of the plot of land in issue in his favour which is filed before the Court.
7. That the applicant has a *prima facie* case and the balance of convenience also lies in his favour and in case injunction is not issued, the applicant will suffer irreparable loss.

It is therefore, prayed that a temporary injunction be issued restraining the defendant from raising further constructions on the plot of land in question during the pendency of the suit.

Sd. A.

Applicant.

Through Shri Prem Nath Garg

Advocate, Saharanpur.

PART II

CHAPTER I

JUDGMENTS IN GENERAL

A judgment is the sentence of a Court of justice. The judgment means the expression of the opinion of the Judge or Magistrate arrived at after due consideration of evidence and of the arguments.¹ In criminal trials a judgment means a judgment of conviction or acquittal but not an order of discharge under section 209,² or section 263³ of the Code of Criminal Procedure.⁴

Section 2 (9) of the Code of Civil Procedure defines a judgment as "the statement given by the Judge of the grounds of a decree or order."

A judgment may be of a Civil or a Criminal Court, of a trial Court or appellate Court or of a Court of revision or in a regular or summary trial. There are, however, certain essentials which every judgment irrespective of its nature must contain. Those essentials are :

- (1) Heading and title of the judgment.
- (2) Facts alleged by the parties to the case.
- (3) Points for decision.
- (4) Decision on those points and reasons therefor.
- (5) Final order.
- (6) Signature and the designation of the Judge and the date of the decision.

The *heading and title* of the judgment comprises the name of the Court, name of the presiding officer of the Court, number of the suit (or trial or other proceeding) and name of the parties. The title and heading of the judgment are worded like this :

"In the Court of Munsif (or Judge or Magistrate)
Present Shri X. Y., Munsif (or Judge or Magistrate)
Suit (or trial or appeal or other proceeding) No. of.....(year
to be specified).

1. *Damu Senapati v. Sridhar Rajwar*, (1893) 21 Cal. 121, 127.

2. Sec. 209 Cr. P. C. contemplates an order of discharge during an inquiry into an offence triable by a Court of Session.

3. Sec. 263 enshrines the particulars to be recorded in a Summary Trial.

4. *Dwarka Nath v. Beni Madhab*, (1901) 28 Cal. 652 ; *Maheswara Kardaya*, (1908) 31 Mad. 543.

X.....Plaintiff (or Appellant etc.).

V.

Y.....Defendant (or Respondent etc.)”

The *narration and arrangement of facts* and the discussion of evidence should be in such a way that they present a well connected and interesting story. The judgment should be intelligible not only to the parties to the case but also to the persons who care to read it. Judgments lay down certain principles of law and as such they are permanent record.

The judgment should be written in *simple language*. It should not be prolix or verbox. ‘A prolix judgment is a torture to write and a torture to read.’ Repetition should be avoided. Again the judgment should be written in brief. But brevity should not tend to obscurity.¹ Besides the judgment should be written in sober and temperate language and in no case the judgment should be satirical or fictitious.² The language of the judgment should be devoid of anything approaching fictitiousness.³ A judgment should be well balanced in ideas and in the arrangement of the matter discussed therein.

A Judge in his judgment should discuss only those *points which are in issue*. It is not obligatory upon him to discuss purely hypothetical questions which may never arise,⁴ or to give findings on points which are not in issue.⁵

A judgment should be *based on the evidence produced in the case* and not on the outside evidence, however acquired.⁶ While writing judgment a Judge should not employ his personal knowledge⁷ or conjectures.⁸

A Judge should not base his judgment on evidence which comes to his notice for the first time when he sits down to write judgment and which was not made the topic of question or argument in the bearing of the case before him.⁹

A reference to a party or a witness should be made by name and number and not merely by number like P. W. 1 or Defendant 1.¹⁰

1. *Baiju v. Emperor*, A. I. R. 1939 Avadh 37.

2. *Public Prosecutor v. Diraviya*, 1931 M. W. N. 1152.

3. *Ibid.*

4. *Madan Mohan Dhur v. Netai Gour Jau*, A. I. R. 1934 Cal. 30.

5. *Rehana Khatun v. Igtidar Uddin*, A. I. R. 1943 All. 184.

6. *Kavanna Vana Kawodoppa Mudali v. Vangammal*, A. I. R. 1939 Mad. 278.

7. *Syed Muhammad v. Emperor*, A. I. R. 1935 All. 902.

8. *Rattan Das v. Darshan Das*, A. I. R. 1950 H. P. 15.

9. *Emperor v. Kaka Mashghul*, A. I. R. 1944 Sind 33.

10. Sub-rule 1, Rule 92 : The (New) General Rules (Civil) 1957 U. P.

A judgment should contain the terms in full and not in abbreviated forms except where the abbreviations are well recognised and are in common use, such as A. M., P. M. *e.g.* etc.¹

The same spellings of proper nouns, names of persons and places should be adhered to throughout the judgment. Places should be spelt according to their recognized spellings.

The documents should be referred to in the judgment by their exhibit marks, *e.g.* "the promissory note Ex. 11" or "the Dying declaration Ex. 2."

Reported decisions should be referred to in the judgments by the names of the parties as well as volume and page of a certain report,² as *Brij Behari v. Ramakant Misra*, A. L. J. 1963, Allahabad 230 and not merely "A. L. J. 1963 Allahabad 230."

A Judge or Magistrate should follow in his judgment the principles of law on the subject laid down by the Supreme Court and in the absence of any such decision the principles of law laid down by the High Court to which he is subordinate.

Where complaints are rejected or returned, and in cases disposed of without decree, as also in cases in which decrees are passed without contest, the Judge should put on record the Section or Order and rule of the Code under which the judgment or order is passed.³

The most important portion of a judgment is the portion relating to the *final orders* of the Court. In civil cases it grants or refuses the relief and in criminal cases it convicts or acquits the accused. Reference should always be made of the provision of law under which the order is passed. Order should be worded in clear and unambiguous terms, lest the party may be deprived of the fruits of the litigation for which he has struggled so far.

The judgment should be written on fulscape paper, one quarter page being left blank.³

No Court should write a judgment or final order on the ordersheet, or on any paper already on the file, such as pleadings, applications, objections etc.⁴

In the last place a judgment should be *signed and dated* by the Judge or the Magistrate at the time of pronouncing it.⁵ But

1. Sub-rule 2, Rule 92 : The (New) General Rules (Civil) 1957 U. P.

2. Rule 91 : The (New) General Rules (Civil) 1957 U. P.

3. Rule 90 : The (New) General Rules (Civil) 1957 U. P.

4. *Ibid.*

5. O. XX, Rule 1, C. P. C. and section 366 (1) (a) of Code of Criminal Procedure.

omission to sign and date a judgment is only an irregularity within the meaning of section 99¹ of the Code of Civil Procedure and does not afford a ground for the reversal in appeal of the decree based on the judgment in the absence of prejudice.² Where judgment is not in the handwriting of the Judge (*e. g.* type-written or written by some other person at his dictation), every page of the record of the judgment should be attested by the Judge's initials.³

Alterations in Judgment.—A judgment once signed cannot be altered or added to, save as provided by section 152 or on review.⁴ In other words a judgment after it has been signed can be altered or added to in the following two circumstances and in no others :

(a) Under section 152 of the Code of Civil Procedure, *clerical or arithmetical mistakes* in judgments, decrees or orders or errors due to *accidental slips or omissions* can be corrected by the Court. Examples are—

- (i) Inadvertently passing a decree for foreclosure instead of one for sale.⁵
- (ii) Inadvertently recording an order of dismissal instead of an order decreeing the suit or appeal.⁶
- (iii) Inadvertently misdescribing the property covered by the decree or judgment.⁷
- (iv) Judgment accidentally including the property of a stranger.⁸
- (v) Passing an erroneous order as to costs by oversight.⁹
- (vi) Accidentally entering the name of a deceased party instead of his legal representatives who had been brought on the record.¹⁰

1. The section reads : "No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder of parties or causes of action or any error, defect or irregularity in any proceedings in the suit, not affecting the merits of the case or the jurisdiction of the Court."

2. ('56) A. I. R. 1955 Raj. 113 (118).

3. Rule 90 : The (New) General Rules (Civil) 1957.

4. O. XX, R. 3, C. P. C.

5. ('14) 7 Low Bur. Rul, 81 (82).

6. ('24) A. I. R. 1924 Oudh 144 (144).

7. ('54) A. I. R. 1954 Pat. 108 (109).

8. ('53) A. I. R. 1953 Mys. 43 (43).

9. ('53) A. I. R. 1953 Mys. 167 (168).

10. ('30) A. I. R. 1930 Sind 96 (96).

(vii) Passing a personal decree against the legal representatives of a party.¹

(b) Under Order 41, rule 1 of the Code of Civil Procedure the Court may grant a review of the judgment.

Under section 151 of the Code of Civil Procedure the Court in the exercise of its inherent powers may also pass orders for amendment of the judgment.

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CHAPTER II

JUDGMENTS OF TRIAL COURTS IN CIVIL CASES

In civil cases trial courts' judgments are of two types :

- (1) Uncontested judgments, *e. g. ex parte* judgments and
- (2) Contested judgments.

The uncontested judgments or the *ex parte* judgments are simple affairs as no issues are framed though the plaintiff is called upon to prove his case.² However, such judgments should also be self-contained and independent and the reader must not feel the necessity of going through the file of the case. It will not be sufficient to say 'the suit is decided *ex parte*' or 'the suit is decreed *ex parte* as prayed.' The facts engendering the claim and the evidence produced in support thereof should be stated in the judgment, though succinctly. An example of *ex parte* judgment is given below :

Suit for Recovery of Money.—This is a suit for the recovery of Rs. 330/- on the basis of a pronote executed by Shyam Lal, the defendant in favour of Sohan Lal, the plaintiff on 2nd March, 1962 for a sum of Rs. 200/. The defendant not having paid any amount towards principal or interest so far, the plaintiff has filed the present suit and has claimed the aforesaid amount together with an interest of 9 per cent per annum. The defendant has not contested the suit. The pronote filed by the plaintiff has been proved by the statement of two witnesses-Bhism Pitama (P. W. 1) and Krishna Sudama (P. W. 2), marginal witnesses to it.

1. ('46) A. I. R. 1940 Cal. 202 (203).

2. ('23) A. I. R. 1923 Nag. 83 (84) D. B.

The plaintiff has himself deposed on oath that he loaned Rs. 200/- to the defendant and the latter has not paid any amount either towards principal or interest so far. The plaintiff's claim as such stands proved.

Order

The suit is decreed *ex parte* for the recovery of the amount claimed with costs. Pending and future interest at the rate of 6% per annum are also decreed.

Contested Judgments.—A judgment in a contested case (other than a Small Cause Court's judgment) should contain :

- (1) a concise statement of the case ;
- (2) the points for determination ;
- (3) the decision thereon ; and
- (4) the reasons for such decision.¹

In writing judgments in appealable cases, the provisions of this rule should be strictly followed.²

The judgment should be written in a narrative form without any heading or break. It is desirable that the trial court should deal with reasonable fulness with the facts as it finds them.³ The judgment should state not merely the finding on the point raised, but must also state what the evidence consists of and how it establishes the plaintiff's or the defendant's case.⁴ A judgment should be well supported by reasons. A judgment unsupported by reasons cannot be accepted as legally binding on the parties.⁵

Beginning of the Judgment.—The beginning of a judgment should be made with a sentence either constituting a separate paragraph or first sentence of the first paragraph, describing the nature of the claim which forms the subject-matter of the judgment. The judge in the few words should dilate upon the nature of the dispute which the judgment has to decide. The opening sentence should be enshrined like this :

“This is a suit for the recovery of Rs. 1230/- on the basis of a pro-note executed by Naresh Goel, the defendant in favour of Ramesh Goel, the plaintiff in the suit for a sum of Rs. 1000/- on 2nd March, 1961”.

1. O. XX, R. 4 (2), C. P. C.

2. ('54) A. I. R. 1954, J. & K. 44 (44),

3. ('45) A. I. R. 1945 P. C. 38 (41).

4. ('52) A. I. R. 1952 Trav.-Co. 560 (561) (D. B.).

5. ('49) 8 J. & K. L. R. 157 (161), ('95) 19 Bom. 323 (326) D. B..

or

“This is a suit for the specific performance of a contract of service signed by Abrar Hussain the plaintiff, and Giri Raj Kishore on 10th December, 1962.”

or

“This is a suit for possession over the property detailed at the foot of the plaint on the basis of pre-emption.”

or

“This is a suit for the restitution of conjugal rights filed by the plaintiff against his wife, the defendant in the suit”.

Statement of the facts of the case.—The introductory sentence of the judgment should be accompanied by a concise statement of the facts of the case. The narration of facts of the case constitutes an important portion of the judgment as it reveals to what extent the Judge has been able to understand the facts of the case. The facts stated by the plaintiff in the plaint and subsequently deposed to in examination under O. X, R. 2, C. P. C. should be narrated first. It is not necessary that the Judge should adhere to the language or the sequence followed in the plaint. He must brief the averments made by the plaintiff in his own language, followed by a likewise concise statement of facts alleged by the defendant in his written statement. Where the defendant admits some allegations of the plaintiff, such admissions should be worded first; where the defendant denies certain allegations of the plaintiff, the denial may be followed by counter-allegations which the defendant avers in the written statement. Further the narration of the facts should be brief and concise as the Code requires ‘a concise statement of the case’. The facts may be stated thus :

“This is a suit for the recovery of Rs. 540/- on the basis of a pro-note alleged to be executed by the defendant in favour of the plaintiff for a sum of Rs. 400/- on 20th June, 1961. The plaintiff alleges that the defendant agreed to pay interest at 12 per cent per annum, but he has not paid any amount either towards principal or interest so far. He has, therefore, instituted the present suit for the recovery of the amount mentioned above.

The suit is contested by the defendant. The defendant admits the execution of the pro-note but pleads the payment of Rs. 300/- to the plaintiff on 2nd January, 1962. Besides, the defendant says that the interest at 12 per cent per annum was never agreed to be paid.”

Where the facts giving rise to suit are common to both the parties and the dispute between the parties exists over matters of latter development, in all such cases facts common to both the parties should be stated first and the latter developments afterwards.

Points for determination.—After narration of facts come the points for determination or the issues as they are generally called. Only those issues as have been framed before the trial of the suit should be incorporated in the judgment. If any alteration or amendment in issues is considered indispensable, that should be done before the evidence of the parties begins. If any alteration or amendment is made subsequently, the parties should be given fresh chance to produce evidence on the amended issues. No alteration or amendment should be made in issues when they are penned in the judgment.

Findings on issues and reasons therefor.—Thereafter the Judge should state his finding or decision with the reasons therefor upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the case.¹ Issues of fact should be taken up first and when the facts are cleared and established, issues of law should be decided on the basis thereof.² There should be a finding on each issue *separately* and not on all issues together.³ Where a Judge clubs together all or most of the issues and writes a diffuse judgement without bringing his mind to bear on the particular matters that have to be decided and then gives his conclusions on the several issues at the end of the judgment, the objection to such a form of judgment is not so much that it contravenes the provisions of this rule but rather that it tends to loose thinking.⁴ In appealable cases, it is always desirable that the Court should, as far as may be practicable, pronounce its opinion on all the important points which have been raised in the case (whether such findings are necessary or unnecessary for the decision of the case) and this is ordinarily excepted in cases where evidence has been allowed to be given on all the issues.⁵ Every issue should be discussed in full with reference to the evidence, facts and law on the point and separate and definite findings should be penned on each issue.

1. O. XX, R. 5, C. P. C.

2. *Sulemdan v. Abdul Skakoor*, A. I. R. 1940 Nag. 99 : I. L. R. 1941⁶ Nag. 735.

3. ('12) 17 IND. Cas 881 (882) (D. B.) (Cal.) ('86) 1886 Bom. P. J. 71.

4. ('48) A. I. R. 1498 Mad. 488 (489) (Order 20, Rule 5, does not appear to make obligatory anything more than that reasons should be given for the finding under the individual cases).

5. ('66) 10 Moo Ind. App. 476 (488) (P. C.).

At some places where the facts involved in the decision of the issues are similar, the two or more issues may be discussed together. However, separate and definite findings should be recorded on the issues so discussed together.

Where the finding on one or more of the issues is sufficient for the disposal of the suit the Judge may give his findings on such issues only and decide the case in accordance therewith.¹ But as a matter of fact he is bound to record his findings on all important issues in appealable cases.²

Discussion of evidence.—A Judge should discuss in his judgment evidence on each issue framed in the suit. It is, however, not necessary that evidence of every witness be incorporated in the judgment. Only relevant portion should be discussed. (For detailed discussion see Chapter VII).

Operative portion of the Judgment.—In the last comes the operative portion of the judgment which allows or disallows relief to the plaintiff. An issue reading “To what relief, if any, is the plaintiff entitled” is framed in every suit. The Judge should specify the relief formally. This is necessary because the decree which follows judgment is prepared according to the operative portion of the judgment and if any relief is not stated in it, the plaintiff would be deprived of the fruits of the litigation, unless he afterwards gets the judgment or the decree rectified. The Judge, therefore, should pay great attention in writing the operative portion of the judgment.³ (For full discussion see Chapter IV).

The Judge should also give his verdict as to costs of the suit. Findings as to costs of the suit are in the discretion of the court,⁴ but the discretion must be exercised on sound principles, that is according to the rules of justice and reason. The general rule is that the costs must follow the event; that is the costs must be awarded to a successful party unless he is guilty of misconduct or there is some other good cause for not awarding costs to him.⁵ Where the court orders that the costs shall not follow the event *i.e.* shall not be awarded to the successful party, it must state its reasons in writing. The Judge should observe the following general principles while awarding costs in a suit :

(1) The costs shall follow an event unless for good reasons it is not proper to do so.

1. O. 20, R. 5, C. P. C.

2. *Loke Nath Mukerje v. Abani Nath Mukerjee*, A. I. R. 1941 Cal. 68.

3. *Vellathusseri Chakkala v. Vellathusseri Chakkala*, A. I. R. 1931 Mad. 650, 195 I. C. 305.

4. S. 35, C. P. C.

5. *Bhubaneshwari v. Nilcoomul*, 121. A. 137.

(2) Where a party succeeds in enforcing a legal right and in no way misconducts himself he must be awarded costs as of right.

(3) Action of a party intentionally done to increase the litigation and costs is a good ground for depriving him of his costs.

(4) Persons wrongfully made parties to the suit are entitled to costs.

(5) Where a plaintiff succeeds only with regard to part of his claim and meets failure on important issues, he should be directed to pay the full costs of the suit to the defendant.

(6) Where the defence is common to all the defendants, separate costs should not be awarded.

(7) Costs on any application should be ordered along with the disposal of the application.

(8) Costs occasioned by the improper, unreasonable and vexatious interrogatives should be ordered to be paid by the party guilty for such interrogatives.

(9) Where the plaintiff withdraws from the suit or relinquishes any part of the claim without the leave of the court, he is liable for such costs as the court may award.

Disposal of two or more suits by the same Judgment.— Sometimes it becomes necessary to decide two or more suits by the same judgment. Law does not provide for the decision of two or more suits by the same judgment. It, however, becomes necessary at places where the facts involved in such suits are same or nearly the same, or where findings in one suit greatly depend upon the findings in the other and the parties agree that the evidence for such suits be recorded at one place. However, there should be a separate judgment for every case. Further in all such cases the Judge should discuss in his judgment in the case in which evidence has been recorded the facts of all the suits and must state towards the close of the judgment how all the suits are to be decided. But the operative portion should speak of the decision in that suit only. For every such other suits the Judge should then write a separate judgment like:

“In view of the findings given in the judgment in suit No. 261 of 1963, copy of which shall form part of this judgment, this suit succeeds (or fails).”

Order

This suit is decreed (or dismissed) in whole (or in part) with costs to the plaintiff (or the defendant).”

This few worded judgment along with the copy of the main judgment should be attached in the file of the suits jointly tried.

Judgments of Small Cause Courts.—The judgment of a small cause court must set out only the (1) points for determination and (2) the decisions thereon.¹ The judgment need not set out the reasons for decision,² though as a matter of practice it is usual to give reasons except in unimportant cases.³ The judgment, however, must be sufficiently intelligible,⁴ and must indicate clearly that the Judge has applied his mind to the case and that the decree or order is according to law.⁵

The mere fact that the judgment of a small cause court does not incorporate the points for determination is, however, no ground for setting it aside, if otherwise the judgment is intelligible and the Judge has applied his mind to the case.⁶

A Model Judgment of Small Cause Court.—This is a suit for the recovery of Rs. 360/- on the basis of a pro-note executed by the defendant in the favour of the plaintiff on 1st March, 1961 for a sum of Rs. 300/-. The defendant pleads that he was paid only Rs. 200/- by the plaintiff and also alleges the payment of Rs. 100/- to the plaintiff on 2nd June, 1962.

From the pleadings the following two issues have arisen:

- (1) Was the defendant given Rs. 300/- or Rs. 200/- only?
- (2) Has the defendant paid Rs. 100/- to the plaintiff on 2nd June, 1962?

Findings

Issue No. 1.—The defendant has admitted the execution of the pronote. The pronote reads payment of Rs. 300/-. The plaintiff also says that he loaned Rs. 300/- to the defendant. The defendant alleges payment of Rs. 200/- only but his statement cannot be relied upon. I, therefore, hold that the defendant was paid Rs. 300/-. Issue is decided accordingly.

Issue No. 2.—The defendant deposes payment of Rs. 100/- to the plaintiff on 2nd June, 1962. The plaintiff denies any such payment. The defendant has not produced any written receipt to warrant payment. I, therefore, hold that the defendant has not paid Rs. 100/- to the plaintiff on 2nd June, 1962. Issue is decided accordingly.

1. O. 20, R. 4 (1), C. P. C.

2. ('21) A. I. R. 1921 Oudh. 138 (138).

3. ('74) 22 Suth. W. R. 202 (203) (D. B.).

4. ('50) A. I. R. 1950 Lah. 128 (129) : Pak. L. R. (1950) Lah. 177. (The judge may without giving or assigning reasons for decisions elucidate points for determination in such detail as to make the decision intelligible).

5. ('32) A. I. R. 1932 Oudh. 143 (144).

6. ('17) A. I. R. 1917 Low. Bur. 34 (34).

Order

The suit is decreed for Rs. 360/- claimed by the plaintiff with costs and pending and future interest at 6% per annum.

Judgment to be signed and dated.—The last but not the least important essential of a judgment is that it must be dated and signed by the Judge in the open court at the time of pronouncing it.¹ Where the judgment is not in the handwriting of the Judge *e.g.*, type-written, every page of the judgment must be attested by the Judge's initials.²

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CHAPTER III

ISSUES

Meaning and importance of issues.—The issues are the points of law or points of facts in a case arising out of the pleadings of the parties to the case. The framing of issues plays an important part in the trial of a case inasmuch as they form the basis of the judgment of the court in the case. Firstly it is the issues and not the pleadings that guide the parties in the matter of adducing evidence.³ Secondly the court cannot decide a suit on a matter on which no issue has been framed. Lastly if the case is appealed it must be dealt with by the Appellate Court on the issues raised for trial⁴ and not on a point on which there is no issue.⁵

Framing of issues.—Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

Every material proposition affirmed by one party and denied by the other forms the subject of a distinct issue.

1. O. 20, R. 3, C. P. C.

2. R. 90, The (New) General Rules (Civil) 1957. U. P.

3. ('44) 48 Cal. W. N. 635 (638) (D. B.) (The question of relevancy of evidence cannot be determined before the issues are framed).

4. ('85) 7 All. 1 (11) : 11 Ind. App. 149 (P. C.).

5. ('86) 12 Cal. 239 (245, 246) : 12 Ind. App. 166 (P. C.).

At the first hearing of the suit the court after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertains upon what material propositions of fact or of law the parties are at variance and thereupon proceeds to frame and record the issues on which the right decision of the case appears to depend. The court, however, does not frame and record issues where the defendant at the first hearing of the suit makes no defence.

Materials from which issues may be framed.—The court may frame the issues from all or any of the following materials—

(a) allegations made on oath by the parties, or by any persons present on their behalf or made by the pleaders of such parties ;

(b) allegations made in the pleadings or in answers to interrogatories delivered in suit ;

(c) the contents of documents produced by either party.

Where the court is of opinion that the issues cannot be correctly framed without the examination of some person before the court or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, and may (subject to any law for the time being in force) compel the attendance of any person or the production of any document by the person in whose possession or power it is by summons or other process.

The court should frame issues only on points which are necessary for the proper trial and disposal of the suit. No issue should be framed on a point of law which is perfectly clear¹ nor is the court bound to grant an issue on a point not arising out of the pleadings.² But where the pleadings raise points with sufficient clearness, issues should be framed on them though they may not have been incorporated in the pleadings in any form.³ The issues should be only on the points in issue and cover each point once only.

Kinds of issues.—Issues are of three kinds :

(a) Issue of fact.

(b) Issue of Law.

(c) Mixed issue of law and fact.

Where issues both of law and fact arise in the same suit, and the Court is of the opinion that the case or any part thereof

1. (1864) 2 Bom. H. C. R. 258 (266).

2. ('21) A. I. R. 1921 Lah. 360 (361).

3. ('15) A. I. R. 1915 Mad. 519 (526) (D. B.).

may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.¹ But if a decision on the question of law depends upon a question of fact, the question of fact should be decided first in order to avoid the necessity of an order of remand in case the appellate or the revisional court disagrees with the proposition of law decided by the lower court.²

Amendment and striking out of Issues.—The court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed. The Court may also at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced. But where the issues have been framed by consent of both the parties they should not be struck out without the consent of the both.³

Issues not to be inconsistent with the pleadings.—The issues framed in a suit should not be inconsistent with the allegations made by the parties in the pleadings. Thus on a plea of forgery of a document no issue should be framed as to whether it was executed under undue coercion or undue influence.⁴ But an issue as to undue influence is not inconsistent with a plea of fraud.⁵

Issues between co-defendants.—The practice is not to frame and try issues between co-defendants. But where an issue is necessary for awarding appropriate relief to the plaintiff, it should be framed and tried.

Omission to frame Issues.—If a court proceeds to the final hearing of the suit without framing issues therein, it commits grave irregularity. But mere omission will not be necessarily fatal to the trial of the suit. The omission may be material or an immaterial one. If the omission has adversely affected the trial of the case on merits the case is strong for remanding the case for a new trial. If on the other hand, the omission has not prejudiced the parties and substantial justice has been done to the case, then in spite of the fact that the issues have not been framed, the decision will not be set aside nor the case will be

1. O. XIV, R. 2, C. P. C.

2. ('55) (S) A. I. R. 1955 Bom. 55 (57).

3. ('28) A. I. R. 1928 Mad. 764 (770, 771) (D.B.).

4. ('88) 15 Cal. 684 (692).

5. ('17) A. I. R. 1917 Lah. 168 (169).

remanded for new trial. Thus a suit will not be remanded for new trial in the following cases on the ground that no issues have been framed therein :

(1) Where the issues not framed are on points not necessary for the right determination of the case.¹

(2) Where inspite of the fact that the issue has not been framed, the parties are alive to the point and have adduced evidence on it and have discussed it in the trial Court.²

(3) Where the party affected had notice of the point and had opportunity to adduce evidence to meet it.³

(4) Where the omission has been due to the deliberate conduct of the party affected.⁴

Wrong Issues.—Where wrong issues have been framed in a suit and the suit has been decided on the basis of those issues, the decision will be set aside in appeal and the suit remanded for re-trial after framing proper issues.⁵ But if the points have been correctly understood by all the parties or if all the available evidence has been adduced on the necessary points and duly discussed, the decision will stand.⁶

Issues by consent.—Where a party has given his consent to the issues framed in the suit, he can raise objection to the decision on the ground that the issues are wrong or defective or unnecessary.⁷ Likewise where the parties affected by the wrong issues have waived their objection thereto, the decision will not be interfered with.⁸

Abandonment of Issues.—The parties are free to abandon issues. Such abandonment may be express or implied from the conduct of the parties. The *Madras High Court* has ruled that Courts are not bound to raise issues *suo motu* on *questions of fact* where parties do not ask for them, that the omission to raise such issues implies an abandonment of such questions by the party interested, but that where the question is one of *law* it is incumbent on the court to frame proper issues on such questions.⁹

1. ('15) A. I. R. 1915 Cal. 648 (648) (D.B.).

2. ('56) 1955) Madh. B. L. J. 484 (486, 487).

3. ('21) A. I. R. 1921 P. C. 84 (86, 87).

4. ('54) A. I. R. 1954 S. C. 263 (266).

5. ('53) I. L. R. (1953) 3 Raj. 27 (35).

6. ('75) 24 Suth. W. R. 275 (276) (D. B.).

7. ('69) 11 Suth. W. R. 277 (278) (D. B.).

8. ('01) 3 Bom. L. R. 535 (537, 538) (D. B.).

9. ('19) A. I. R. 1919 Mad. 698 (699) (D. B.).

The Bombay High Court, on the other hand, has observed that it would be unsafe to presume from the failure of the Court to raise the necessary issues, an intention on the part of the party to admit the fact which the other party was bound to prove.¹

Issues in Small Cause Court Suits.—The Code of Civil Procedure does not prohibit the framing of issues in Small Cause Court suits. The framing of issues is also not prohibited in the Provincial Small Cause Courts Act of 1887.

Arbitration Proceedings.—The Civil Procedure Code does not enshrine as compulsory the framing of issues in an arbitration proceeding.²

Execution Proceedings.—Issues are not necessarily framed when objections in execution proceedings are decided.³

CHAPTER IV

GRANT OF RELIEF IN CIVIL CASES

We have already observed that the decree in a suit is so drafted as to be self-contained and capable of execution without referring to any other document.⁴ Since a decree must invariably agree with judgment,⁵ the judge should observe utmost care in writing the operative portion (relief) of the judgment. If some negligence is made by the Judge in drafting the operative portion of the judgment, the plaintiff may be deprived of the fruits of the litigation, for which he had struggled so far.

The Judge, therefore, should grant relief in specific and definite terms in the operative portion of the judgment. The relief should not be ambiguous, vague or evasive. Where the suit is decreed or dismissed in part, the extent to which the claim is decreed or dismissed must be specified in unambiguous and definite terms. Where the pending and future interest are awarded in money suits, the rate of interest and the amount over which the interest is to be awarded should be mentioned in clear terms. The wordings may be like this : “The suit is decreed for the recovery of Rs. 583/- together with costs and pending and future

1. ('02) 26 Bom. 360 (362) (D. B.).

2. ('56) (S) A. I. R. 1956 Cal. 470 (476).

3. ('56) (S) A. I. R. Raj. 1 (2) (D. B.).

4. *Mohammad Zafar v. Mata Badal*, A. I. R. 1944 Avadh 42.

5. O. 20, R. 6, C. P. C.

interest over Rs. 300/- only at 3% per annum". It is not enough to specify "The suit is decreed for Rs. 583/- with costs and pending and future interest."

Grant of Instalments.—The Court in certain cases makes order for the payment of decretal amount by instalments. In such cases the Judge should make a specification to that effect. Instalments are granted not as a matter of course. Where the Judge grants instalments, he should state reasons for granting instalments. The amount of instalments and the date of their payment should also be specified. The Judge should also make provision as to what is to happen in case the instalments are not paid. Further if the Court decrees future interest, the Judge should also state whether the interest is to run over entire amount from the date of the decree, or only on those instalments which are not paid on specified dates. Where the Court decrees payment by instalments, the order may take some such form :

"The suit is decreed for the recovery of Rs. 700/- with pending and future interests at 3% per annum. The amount shall be paid in half-yearly instalments of Rs. 50/- each beginning with 1st June 1963. In any case if any two instalments are not paid, the entire balance will become payable at once."

Suits for Mesne Profits.—Mesne profits of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits but does not include profits due to improvements made by the person in wrongful possession.¹ In suits for recovery of possession of immovable property and for rents and mesne profits where the possession is decreed, the Court must make provision for mesne profits. The mesne profits may be past *i. e.* those accrued prior to the institution of the suit or future *i. e.* those accruing after the institution of the suit. In both the cases the Court may direct inquiry. In the case of rent or mesne profits accruing due from the institution of the suit, the Judge should direct an inquiry with respect thereto from such date until—

- (i) the delivery of possession to the decree-holder ;
- (ii) the relinquishment of possession by the judgment-debtor with notice to the decree-holder through Court ; or
- (iii) the expiration of three years from the date of the decree, whichever event first occurs.²

When a Court directs a preliminary inquiry as to mesne profits, it should at the same time decide the basis upon which the

1. Section 2 (12), C. P. C.

2. O. 20, Rule, 12 (c) C. P. C.

mesne profits are to be assessed.¹ The trial Court should not direct the execution Court to make inquiry about rent or mense profits,² but should make itself and then pass a final decree in respect of the rent or mesne profits in accordance with the result of such inquiry.³

Suits for recovery of immovable property.—Where the subject matter of the suit is immovable property, the decree should contain a description of such property sufficient to identify the same and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree should specify such boundaries or numbers.⁴ It is, however, not necessary that a full description of the property should be given in the relief portion of the judgment. It would be sufficient to refer the property in such detail that the decree-writer may not face difficulty in preparing the decree. Where a map or plan of the property has been presented in the suit, the Judge should direct that such map or plan may be made a part of the decree. At places the property may be referred to with the help of some figures or letters.

Suits for recovery of movable property.—When the suit is for movable property and the Court decrees the delivery of such property, the decree should also state the amount of money to be paid as an alternative if delivery is not made within the specified time.⁵ The operative portion in such suits may assume the following form :

“The suit is decreed for the specific delivery of the Eastern Star Cycle No. to the plaintiff within fifteen days from to-day with costs of the suit. If the delivery is not made within the said time the plaintiff shall be entitled to recover Rs. 200/- from the defendant in the alternative”.

Administration suits.—‘An administration suit is a suit for an account of some property and its due administration under the decree of the court. In such suits, the court before passing the final decree should pass a preliminary decree ordering such accounts and inquiries to be taken and made and giving such other directions as it thinks fit. The law does not lay down the contents which a final decree in such suits should contain. It will depend upon the nature of dispute in each case.’⁶

1. *Kiran Chandra Roy v. Eifan Kankar*, A. I. R. 1934 Cal. 503.

2. *Raghubir Singh v. Secretary of State*, A. I. R. 1938 All. 455.

3. O. 20, Rule 12 (2).

4. Order 20, R. 9, C. P. C.

5. Order 20, R. 10, C. P. C.

6. *Shahzadi Bi v. Rahmat Bi*, A. I. R. 1936 Lah. 879.

Pre-emption suits.—Pre-emption suit is a suit filed by the owner of certain immovable property, to obtain in substitution for the buyer, proprietary possession of certain other immovable property, not his own, on such terms on which such latter property has been sold to another person. In such suits where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase money has not been paid into the Court, the decree should :

(a) specify a day on or before which the purchase-money shall be so paid, and

(b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a) the defendant shall deliver possession of the property to the plaintiff whose title shall be deemed to have accrued from the date of such payment, but that if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs.

Where the Court has adjudicated upon rival claims to pre-emption, the decree should direct :

(a) if and in so far as the claims decreed are equal in decree, that the claim of each pre-emptor complying with the provisions laid down in the aforesaid clauses (a) and (b) shall take effect in respect of a proportionate share of the property including any proportionate share in respect of which the claim of any pre-emptor failing to comply with the said provisions would, but for such default, have taken effect; and

(b) if and in so far as the claims decreed are different in decree, that the claim of the inferior pre-emptor shall not take effect unless and until the superior pre-emptor has failed to comply with the said provisions.¹

Suits for dissolution of partnership.—In suits for the dissolution of a partnership or the taking of partnership accounts, the Court before passing a final decree, should pass a preliminary decree declaring the proportionate shares of the parties, fixing the day on which the partnerships shall stand dissolved or be deemed to have been dissolved, and directing such accounts to be taken, and other acts to be done, as it thinks fit.²

Suits for accounts.—In a suit for an account of pecuniary transactions between a principal and an agent, where it is necessary, in order to ascertain the amount of money, due to or from any party, that an account should be taken, the Court must,

1. O. XX, R. 14, C. P. C.

2. O. XX, R. 15, C. P. C.

before passing its final decree, pass a preliminary decree directing such accounts to be taken as it thinks fit.¹ The Court may also either by decree directing an account to be taken or by any subsequent order give special directions with regard to the mode in which the account is to be taken or vouched.²

Suits for partition.—Where the Court passes a decree for the partition of the property or for the separate possession of a share therein then (a) if and in so far as the decree relates to an estate assessed to the payment of revenue to the Government, the decree must declare the rights of the several parties interested in the property and direct that such partition or separation shall be made by the Collector or any gazetted subordinate of the Collector deputed by him in this behalf, in accordance with the law (if any) for the time being in force relating to the partition, or, the separate possession of shares, of such estates, (b) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or the separation cannot be conveniently made without further inquiry, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.³

Mortgage suits.—Relief in mortgage suits should be granted in terms of Order XXXIV, Rules 2 to 9 of the Code of Civil Procedure. In such cases the judge should not lay down all the rules in the operative portion of the Judgment but should simply lay down that preliminary or final decree be prepared under such and such rule. Where any variations in the rules are made, those variations should be specified in clear terms.

Suits for maintenance.—In maintenance suits, the decree may be passed for the recovery of past or future maintenance. Where the past maintenance is decreed, the decree should be prepared as in other money suits. Where the suit is decreed for future maintenance, the Court should specify in the decree the rate of maintenance, the date of payment of instalments of maintenance and also the interest payable when the instalment is not paid. Where the Court intends to secure the maintenance over any property, the decree should be prepared as in the case of the recovery of mortgage money by sale under Order XXXIV, Rule 4 of the Code of Civil Procedure. In such cases under the rule, a preliminary decree will be drawn up and the decree-holder will apply for final decree if the amount of maintenance decreed is not paid.

Suits for Injunction.—The Judge should pen the injunctions in clear and specific terms. It is not advisable to lay down that

1. O. XX, R. 16, C. P. C.

2. O. XX, R. 17, C. P. C.

3. O. XX, R. 18, C. P. C.

injunction is granted as prayed. The exact words in which the Court intends to grant injunction, should be written in the operative portion of the judgment. Where a mandatory injunction is decreed, some time should be given for complying with the orders of the Court. Where the injunction is to be complied in a certain manner, full details should be given with respect thereto.

Relief in set-off cases.—Where the defendant has been allowed a set-off against the claim of the plaintiff, the decree must state what amount is due to the plaintiff and what amount is due to the defendant and shall be for the recovery of any sum which appears to be due to either party.¹

Decree against Legal Representative.—Where the Court decrees a suit against the legal representative of a deceased person, the relief should be granted against the property of the deceased person in the hands of the defendant. There can be no decree simply against the assets of the deceased person; it must always be against the assets in the hands of the same person.²

CHAPTER V

JUDGMENTS IN MISCELLANEOUS CASES

The courts in civil cases sometimes pass orders. These orders are akin to judgments of trial courts in original suits, with the only difference that the points involved in them are generally few and the facts of the case are simple and briefly stated. A judgment in such cases, however, should set out the facts giving rise to it in brief, the points involved for decision and the reasons therefor together with the final order. The evidence adduced by the parties should be discussed in appealable cases in the same manner as in the case of judgments in original suits, while in non-appealable case only in brief. A few examples of judgments (orders) in miscellaneous cases may be given below :

Application for Restoration of a Suit.—“This is an application moved by the plaintiff for the restoration of the suit which has been dismissed for default on 16th November, 1963. The plaintiff-applicant contends that he was to come to the Court by the morning train which leaves Hapur at 8. A. M. but his Rikshaw having got punctured on the way to the station he could not reach the station in time. The Court dismissed the suit in his absence.

1. O. XX, R. 19 (1), C. P. C.

2. *Rathnammal v. Sundarm Achari*, A. I. R. 1933, Mad. 508.

The defendant in opposition to plaintiff's application alleges that the train was late by about 45 minutes that day. Further as there is half an hour bus service between Hapur and Meerut, the plaintiff could have come easily by bus.

The plaintiff-applicant has deposed on oath that he reached the station at 8. 10. A. M., by which time the train had left. On the other hand the record produced by Shri M., Station Master. Hapur, shows that the train which leaves Hapur for Meerut at 8. P. M. was late by an hour that day. The plaintiff's contention is thus false. Further the time-table of the U. P. Roadways shows that there is half an hour bus service between Hapur and Meerut, the plaintiff could have come easily by bus.

The plaintiff's case for non-appearance has not been established.

Order.

The application is dismissed with costs to the defendant-opposite party.

Application to set aside an ex-parte decree.—In a case in which a decree is passed *ex-parte* against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.¹

“This is an application for setting aside an *ex-parte* decree passed against the defendant on 19th October 1963. The defendant-applicant contends that he had a heart attack on the morning of 10th October, the date fixed for the hearing of the suit and that there was none beside him except his wife who was busy in attending on him through whom he could inform his counsel about his illness and to apply for adjournment.

The contention of the plaintiff-opposite party is that the defendant-applicant wilfully absented himself on the date of hearing as his evidence was not ready.

The defendant-applicant has filed a medical certificate from Dr. XY and an affidavit in support of his contention and has also made a statement on oath supporting his contention. The plaintiff

1. O. IX, R. 13, C. P. C.

opposite party has not adduced any evidence to repudiate the defendant-applicant's contention. I, therefore, accept the contention of the defendant-applicant, subject to the payment of additional expenses to the opposite party.

Order.

The application is allowed. The *ex-parte* decree passed on 19th October 1963 is set aside and the suit is restored to its original number. The applicant shall pay Rs. 50/- as costs to the opposite party within fifteen days. In case the applicant does not pay the aforesaid costs within the time fixed above, the application will stand dismissed with costs to the opposite party, and the *ex-parte* order passed on 19th October 1963 will stand."

Interlocutory orders.—Interlocutory orders are the orders passed by a Court during the pendency of a suit, which do not decide the substantive rights of the parties in issue in the suit or finally decide the suit, but provide for the detention, preservation ; inspection etc. of the subject-matter of the suit. Examples are injunctions. They are similar to the orders passed by the Court in miscellaneous cases. Where such orders are appealable or likely to be questioned in revision, full details as to how the points for determination arose and what were the grounds on which the order was passed should be given. Failure to do so will result in the order of remand of the case or for re-writing the judgment by the appellate Court. An injunction is not to be granted as a matter of indulgence and it may be granted only where certain conditions are satisfied. Granting or refusing to grant an injunction are matters in the discretion of the Court and it has been held over and over again that the discretion is not an arbitrary discretion but must be judicially exercised. The discretion is subject to correction by a superior Court. It is obvious that a superior Court cannot be in a position to affirm or set aside the order granting injunction unless the grounds upon which and the circumstances in which the discretion has been exercised appear from the judgment. An order granting injunction is an appealable order and an appealable order should be such as enables the Court of appeal to judge on a perusal of the order itself as to whether the order is a justified order or not.¹

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1. *M. Qadir v. P. L. Jaitley*, F. A. F. O. No. 131 of 1946.

CHAPTER VI

JUDGMENTS IN CRIMINAL CASES

Contents of Judgment.—Section 367 of the Code of Criminal Procedure enshrines contents of a judgment in a criminal case. A judgment in a criminal case is to contain :—

- (i) facts of the case ;
- (ii) the point or points for determination ;
- (iii) the decision on the points and the reasons for the decision ;
- (iv) the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted and the punishment to which he is sentenced. When any person is sentenced to death, the sentence must direct that he be hanged by neck till he is dead ;¹
- (v) when the conviction is under the Indian Penal Code and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, they must be stated expressly and the judgment passed in the alternative ;
- (vi) if the judgment is of acquittal, the offence of which the accused is acquitted and that he be set at liberty.

The provisions of the section are mandatory ; on failure to comply with them the judgment will be set aside. But if the judgment shows that the presiding Judge or the Magistrate has pursued the evidence, heard arguments, and come to an independent opinion on the merits of the case, it will not be set aside although it does not strictly comply with the provisions of this section unless there is some reason to believe that there has been a failure of justice.²

Charge.—Like issues in a civil case the framing of a proper charge is vital to a criminal case and this is a matter on which the Judge should bestow the most careful attention.³ The purpose of a charge is to apprise an accused as precisely and concisely as possible of the offence with which he is charged.

A charge should contain the following particulars :

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- 1. Sec. 368, Cr. P. C.
 - 2. Tippianna Karigar (1932) 34 Bom. L. R. 1110.
 - 3. Bala Krishan (1958) Kerala 283.

(i) A specification of the offence with which the accused is charged.¹

(ii) If the law which creates the offence gives it any specific name, that name.²

(iii) If the law which creates the offence does not give it any specific name, so much of the definition of the offence as gives the accused notice of the matter with which he is charged.³

(iv) The law and section of the law against which the offence is said to have been committed.⁴

(v) Such particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.⁵

(vi) When the nature of the case is such that the above mentioned particulars do not give the accused sufficient notice of the matter with which he is charged, such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.⁶

The charge should be precise and complete in itself and should be so framed as to give the accused full notice of the offence charged against him. The use of abbreviations like etc. should be avoided.⁷

One Judgment for two or more cases.—There should invariably be a separate judgment in every criminal trial. If somehow two or more suits are ordered to be tried jointly, even then there should be separate judgments in each case.⁸ “The writing of a single judgment in two separate trials, where law requires a judgment to be written, is not commendable. If two separate cases are so closely connected together that the trial court thinks that a single judgment would sufficiently cover the two separate cases, the best course to adopt is to write a detailed judgment containing a complete recital of the facts what seems to be more important of the two cases, and it would not

1. Sec. 221 (1), Cr. P. C.

2. Sec. 221 (2), Cr. P. C.

3. Sec. 221 (3), Cr. P. C.

4. Sec. 221 (4), Cr. P. C.

5. Sec. 222 (1), Cr. P. C.

6. Sec. 223, Cr. P. C.

7. (1864) 1. Suth. W. R. Cri. letters 13 (13, 14).

8. *Madat Khan v. King Emperor*, A. I. R. 1927. P. C. 26.

be objectionable as a rule to refer to such recitals in the separate judgment recorded in the less important case. But in such cases the Court should always be careful to see that evidence which is only admissible in one of the two cases is not referred to or put forward as a reason for a conviction in the case in which it is not relevant."¹

Judgment how Commences.—A judgment in a criminal case begins with a statement of the facts of the case against the accused, though the practice is to refer to also at the very outset the offence for which the accused has been tried and whether the accused has been prosecuted by the police or has been tried on the basis of a complaint instituted by a private individual. Thus a judgment in a criminal trial may begin in any of the following ways :

"The accused A has been prosecuted by the police for having....."

or

"The accused X and Y stand committed to sessions for facing their trial under sections.....of the Indian Penal Code for having....."

"The accused A, B and C were charged with offences punishable under sections.....of the Indian Penal Code on the basis of a complaint filed by A on 10th October, 1963....."

Statement of facts.—Then the Magistrate or Judge should state the facts giving rise to prosecution in brief. Thereafter, the Magistrate or the Judge should set forth whether the accused did or did not plead guilty and where the accused had pleaded guilty the facts in brief alleged by them so as to indicate what the defence case is.²

Points for Determination.—Thereafter the Magistrate or the Judge should set out the points for determination in the case. This would indirectly involve the discussion of the whole case. The points for determination should be set out in such a way that the Judge or the Magistrate and also the appellate Court may infer that nothing which is material has been left.³

Reasons for findings.—After the statement of facts and the points for determination, the Magistrate or the Judge should state reasons for the findings. Recording of reasons for findings is so essential that default would render the judgment liable to be set

1. *Pre Piggot J. in re Bhola Nath v. Emperor*, (1920) 21 Cr. L. J. (442) (All.).

2. *In re Govindan*, A. I. R. 1942 Mad. 669.

3. *Udharam v. Emperor*, A. I. R. 1932 Sind. 143.

aside. Where the statement of points for determination and the reasons for the decision were not prepared until three weeks after the pronouncement of the judgment in open Court, it was held that the defect vitiated the conviction.¹

An order of discharge is not a judgment and no reasons are necessary where such an order is passed, but it is desirable that the Magistrate should record his reasons for discharge.²

Discussion of Evidence.—How evidence should be discussed, we shall discuss in a separate Chapter titled 'Discussion of Evidence'. It will be sufficient to point out here that the evidence should be fully discussed; the discussion being neither too lengthy nor too brief. The prosecution witnesses should not be easily believed; the Court should give reasons for doing so.³ It is not sufficient to say that on a careful consideration of the evidence, the Court had come to this or that conclusion.⁴ Further there should be consistencey and coherence in discussing the evidence and in arriving at the final conclusions by the Magistrate or the Judge. Where the Magistrate recorded in his judgment that in some material parts of the case of the prosecution, the evidence was unsatisfactory and unreliable, that the motive alleged on behalf of the prosecution for the serious riot was not proved, that the number of the rioters was greatly exaggerated and criticism of the prosecution witnesses and yet without considering the individual cases of the accused, convicted the accused, the High Court criticized the judgment as a most confused one.⁵

Defence case to be Examined.—In cases where the accused have claimed to be tried the Court must record in the judgment whether they have examined witnesses in their defence. In case the witnesses summoned for the defence were not examined reason should be given why they were not examined.⁶ Where the defence is rejected, the Magistrate or the Judge should record in the judgment why the defence was rejected and the prosecution case believed.⁷ In conviction the Magistrate or the Judge besides discussing defence evidence, must discuss the prosecution evidence and come to a positive finding on the points sought to be made out by the prosecution.⁸

1. Jhari Lal, (1929). 9 Pat. 904.

2. Nabi Fakira, (1907) 9 Bom. L. R. 250.

3. *H. Sahadeviah v. Venkatamma*, A. I. R. 1950, Mys. 21.

4. *Ambor Ali v. Nichar Ali*, A. I. R. 1950, Ass. 71.

5. *Jiwan Raut v. The King Emperor*, A. I. R. 1924, Pat. 380.

6. Rule 57 : General Rules Criminal 1957, U. P.

7. *In re Govindan*, A. I. R. 1942, Mad. 669.

8. *Nishi Kanta v. Behari*, (1933) 34 Cr. L. J. 1059.

Accused to be considered individually.—Where in a case the number of accused exceeds one, the Court must deal with the case of each accused separately and record its findings thereon.¹ “A judgment must conform to the provisions of section 367 Criminal Procedure Code, which require *inter alia* that it shall contain the points for determination, the decision thereon and the reasons for the decision. *These requirements must be fulfilled in respect of each individual accused.*”²

Judgment in cases transferred under section 349 Cr. P. C.—In cases where a Magistrate of the second class or third class transfers proceedings under section 349 Cr. P. C.,³ to the District Magistrate or the Sub-Divisional Magistrate, the latter will write a full judgment afresh.⁴

Presidency Magistrate's Judgment.—Instead of writing a judgment in manner hereinbefore provided, a Presidency Magistrate should record in his judgment the following particulars:

- (a) the serial number of the case ;
- (b) the date of the commission of the offence ;
- (c) the name of the complainant (if any) ;
- (d) the name of the accused person, and his parentage and residence ;
- (e) the offence complained of or proved ;
- (f) the plea of the accused and his examination (if any) ;
- (g) the final order ;
- (h) the date of such order ; and
- (i) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees or both, a brief statement of the reasons for the conviction.⁵

Clause (i) requires a Presidency Magistrate to give a brief statement of the reasons for conviction so that the High Court may know the Magistrate's reasons if the record is called for on

1. *Jiwan Raut v. King Emperor*, 1924, Pat. 380.

2. *Abid Kairm Muhomed Saleh v. Emperor*, A. I. R. 1940 Sindh. 113.

3. The section provides that “Wherever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, but considers that he is not competent to pass punishment of an appropriate description or sufficiently severe to meet the ends of justice, he may submit the entire proceedings for the orders of the District Magistrate or the Sub-divisional Magistrate to whom he may be subordinate.”

4. *Thakur Singh v. Emperor*, (1919) 20 Cr. L. J 444 (Pat.).

5. Section 370, Cr. P. C.

revision.¹ For the applicability of the clause there must be a substantive sentence of imprisonment and not a sentence in default of payment of fine.²

Where a fine is below two hundred rupees no brief statement of the reasons for conviction is necessary, but, in the event of a written judgment by the Presidency Magistrate, he should come to proper findings in support of the conviction.³

Judgments in summary cases.—In summary trials under section 260 of the Criminal Procedure Code, where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a charge but should enter in the form prescribed by the State Government the following particulars only:

- (a) the serial number ;
- (b) the date of the commission of the offence ;
- (c) the date of the report or complaint ;
- (d) the name of the complainant (if any) ;
- (e) the name, parentage and residence of the accused ;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e), clause (f) or clause (g) of sub-section (I) of section 260 the value of the property in respect of which the offence has been committed ;
- (g) the plea of the accused and his examination (if any) ;
- (h) the finding, and in the case of a conviction, a brief statement of the reasons therefor ;
- (i) the sentence or other final order ; and
- (j) the date on which the proceedings terminated.⁴

The Magistrate conducting summary trial in *non-appealable cases* need not record in writing the evidence of witnesses, but he must hear the evidence of the witnesses.⁵ If a Magistrate records in writing the evidence of witnesses, the notes of evidence constitutes part of the record. If a Magistrate destroys his notes, the *Calcutta High Court* is of the opinion that the conviction is liable to be set aside.⁶ On the otherhand the *Allahabad* and *Bombay*

1. Dervish Hussain, (1922) 46 Mad. 253.

2. *Moteeram v. Belaseeram*, (1866) 14 Cal. 174.

3. Nishikanta Chatterji, (1922) 60 Cal. 656.

4. Section 263, Cr. P. C.

5. *Jobbar Saik v. Tamiz Shaikh*, (1912) 39 Cal. 931.

6. *Satish Chandra Mitra v. Manmatha Nath*, (1920) 48 Cal. 280.

High Courts have held that the destruction of such notes does not amount to an illegality.¹ A Magistrate's notes are his private property and he can treat them exactly as he pleases.² The rough and incomplete notes are outside the record.³

Further in *non-appealable cases* the Magistrate need not frame a formal charge, but the accused has right to be apprised of the precise nature of the offence with which he is charged. The record should state the offence clearly and distinctly.⁴

In *appealable cases i. e.* cases in which the Magistrate passes a sentence of fine exceeding two hundred rupees, the Magistrate should record the substance of evidence along with the particulars to be recorded in a non-appealable case.⁵ The expression 'substance of evidence' calls for a little elucidation. The expression means that the evidence must be sufficient to justify the Magistrate's order.⁶ The evidence must be so much as to enable the appellate court to perform its function in appeal. The expression never means that the Magistrate should incorporate in the judgment gist of the evidence of each witness examined separately irrespective of the character, quality and relevance of such character.⁷

The *Allahabad High Court* has ruled that if the evidence is not so embodied in the judgment, the Magistrate may be required to do so even after re-examining the witnesses or a re-trial may be ordered.⁸ On the otherhand the *Bombay* and *Calcutta High Courts* have held that the omission vitiates the trial.⁹

1. Mantu Tiwari (1926) 49 All. 261; Chiman Lal, (1927) 29 Bombay, L. R. 710.

2. Mantu Tiwari, Sup.

3. Chiman Lal, Sup.

4. Madhab Chandra Saha, (1926) 53, Cal. 738.

5. Section 264, Cr. P. C.

6. Aninddi Sheikh, (1900) 27 Cal. 450.

7. *Emperor v. Hansraj Dindoyal*, A. I. R. 1948 Sind. 59.

8. *Karan Singh* (1878) 1 All. 680.

9. *Nurudin* (1928) 30 Bom. L. R. 954; *Kheraj Mullah* (1873) 11 Beng. L. R. 33; 20 W. R. (Cr.) 13.

CHAPTER VII

DISCUSSION OF EVIDENCE

Phipson defines 'evidence' to mean "the facts, things and documents which may be legally received in order to prove or disprove the fact under inquiry." Taylor applies the word to all such legal means of mere argument.

Section 3 of the Indian Evidence Act defines 'evidence' as follows :

Evidence means and includes :

(1) all statements which the court permits or requires to be made before it by the witnesses, in relations to matters of fact under inquiry ; such statements are called oral evidence ;

(2) all documents produced for the inspection of the Court ; such documents are called documentary evidence.

To succinct 'evidence' includes 'all the legal means which tend to prove or disprove any matter or fact the truth of which is submitted to judicial investigation.'

A Judge or Magistrate should discuss evidence in his judgment of the following facts and no others :

(1) Facts in issue.¹

(2) Facts which though not in issue are so connected with a fact in issue as to form part of the same transaction.²

(3) Facts which are occasion, cause or effect of facts in issue.³

(4) Motive, preparation and previous and subsequent conduct.⁴

(5) Facts necessary to explain or to introduce relevant facts.⁵

(6) Things said or done by conspirators in reference to common design.⁶

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1. Section 5 : Indian Evidence Act.
 2. Section 6 : Indian Evidence Act.
 3. Section 7 : Indian Evidence Act.
 4. Section 8 : Indian Evidence Act.
 5. Section 9 : Indian Evidence Act.
 6. Section 10 : Indian Evidence Act.

(7) Facts inconsistent with any fact in issue and facts which by themselves or in connection with other facts make the existence or non-existence of any fact in issue or relevant fact, highly probable.¹

(8) Facts showing existence of state of mind or of body or bodily feeling.²

(9) Facts bearing on question whether act was accidental or intentional.³

Fundamental principles.—The following are the certain principles laid down by the various Courts in India from time to time, which a Judge or Magistrate should observe in discussing evidence in his judgment :

(i) A Judge or Magistrate must give his judgment on the basis of the evidence before him. He should not base his findings on matters within his personal knowledge⁴ or conjectures.⁵ He is not supposed to import into his judgment information acquired by his personal source. Judgment must be based on the evidence in the case and not on outside information, however acquired.⁶

(ii) Evidence should be discussed on each issue separately. But where two or more issues are so interlinked that evidence on them can be discussed better, evidence on such issues may be discussed simultaneously. Where discussion on one issue leads upto another, the former issue should be taken up first. In criminal cases where charge can be broken into separate parts, evidence on each part should be discussed separately.

(iii) The Judge or the Magistrate before coming to a finding on a certain point should discuss the whole evidence on the point in his judgment. He should not merely say that on a careful consideration of the evidence he has come to this or that conclusion.⁷

The principle that the Judge or the Magistrate should before giving finding on a certain point should discuss the whole evidence on the point, however, does not mean that the Judge or the Magistrate should import in his judgment all the evidence produced in the case⁸ or discuss the evidence with minute details.⁹ The Judge

1. Section 11 : Indian Evidence Act.

2. Section 14 : Indian Evidence Act.

3. Section 15 : Indian Evidence Act.

4. *Syed Muhammad v. Emperor* A. I. R. 1935 All. 902.

5. *Rattan Das v. Darsan Dat*, A. I. R. 1950 H. P. 15.

6. *Kavanna Vana Kowndappa Mudali v. Vangamnal*, A. I. R. 1936 Mad. 278.

7. *Ambor Ali v. Nichar Ali*, A. I. R. 1950, Ass. 71.

8. *Jhabhwala v. Emperor*, A. I. R. 1933 All. 690 (696).

9. *Jitendra Nath Gupta v. Emperor*, A. I. R. 1937 Cal. 99.

should select evidence which he considers necessary on the point and should discuss that evidence only. He is not to discuss the whole evidence adduced in the case. The judgment should contain only evidence sufficient to ascertain the facts deposed to, the importance of and the value to be attached to the evidence of witnesses, and the reasoning based on the evidence on which the Judge grounds his decision and his sentence.¹

(iv) The Judge should not summarise the statements of the witnesses in the case or prepare 'a catalogue of the documents filed in the evidence'. An analytical appreciation of the evidence is but necessary.

(v) In discussing evidence the Judge or the Magistrate should keep in his mind three aspects of evidence viz., the volume of evidence, the weight of evidence and the probability of evidence. These three aspects of evidence determine the findings on a certain question of fact in the case.

(vi) The Judge or the Magistrate should attach more importance to the quality rather than to the quantity of evidence. Section 134 of the Indian Evidence Act does not prescribe any number of witnesses required for the proof of any fact. The evidence is to be weighed and not numbered. *Ponderantur tests non numerantur*. The preponderance of a number of witnesses on the said is no test. A Judge is fully justified in believing one witness in preference to three others if he sees reasons to do so and it is not legally necessary that he should detail reasons. A Judge should not believe a pen to be pencil because more number of witnesses state it as a pencil. Quantity should not give way to quality. "And after all what it is worth? In the multitude of counsellors, says the proverb, there is safety, in the multitude of witnesses there may be some such of safety but nothing more; it is by weight, full as much as by tale, that witnesses are to be judged. Nothing can be weaker than the best security that can be derived from numbers. In many cases, a single witness, by the simplicity and clearness of his narrative, by the probability and consistency of the incidents he relates, by their agreement with other matters of facts too notorious to stand in need of testimony, a single witness will be enough to stamp conviction on the most reluctant mind. In other instances, a crowd of witnesses, though all were to the same fact, will be found wanting in the balance."²

(vii) Where the stories recited by the witnesses apparently seem to be concocted or incredible, the Judge should believe in that story which fits in with the admitted circumstances and the resulting probabilities.³

1. *Nga Than v. King*, A. I. R. 1939 Rang. 263.

2. Jermy Bentham : *Rationale a Judicial Evidence*, B. IX, VI, C. I.

3. *Davis v. Maung Shwe Co.*, (1911) 381 A. 155.

(viii) Where the evidence produced by both the parties to the case happens to be extremely contradictory or palpably false and both the parties conceal the truth and do not adduce full facts before the Judge, and the Judge is fully convinced that the parties intentionally have not disclosed the truth, the Judge should give his verdict against the party on whom lies the burden of proof.¹

(ix) While deciding an issue great importance should be attached to the documentary evidence on the issue adduced in the case. In case of parallel sets of documents or where one document warrants one view and other warrants the other, the Judge should try to reconcile them. Where the genuineness of a document is doubted that matter should be taken separately. Where oral evidence is required to prove a certain document it is not necessary to mention in the judgment the evidence on the basis of which that document has been treated as proved. Mere putting of exhibit mark on the document is sufficient. 'But if the opposite side questions the proof or disproof of a certain document and the Judge has not passed any order with respect thereto on the file, that point assumes some importance and the Judgment in that case should indicate how and why a particular document was treated as proved or disproved.'

(x) Documents should be referred to in the judgments by their exhibit marks. Where a series of documents have been produced on a certain point, all those documents need not be discussed in the judgment, but it is sufficient to give a summary of all such documents.

(xi) While discussing oral evidence in his judgment the Judge should point out the contradictions in the statements of the witnesses.

(xii) Evidence in criminal cases fall under four heads, viz., direct, circumstantial, technical and formal. Direct evidence should be dealt with first and then should come the circumstantial evidence which warrants the conclusions drawn from the direct evidence or points out its weaknesses. Technical evidence, e. g., expert evidence report of the Surgeon who conducted *post mortem* examination and the report of the chemical examiner should be discussed at the proper place in the judgment. If possible the motive behind the commission of the crime should also be indicated and this either along with the circumstantial evidence, or after the evidence has been discussed and analysed. Formal evidence should be discussed in the last and that too in brief.

1. *Nahalingam Asari v. Lakshmana Reddiar*, A. I. R. 1949 Mad. 756.

(xiii) A Judge or Magistrate may give his judgment on the basis of circumstantial evidence. To establish a case on circumstantial evidence four things are essential :

- (1) The circumstances from which the conclusion is drawn, be fully established.
- (2) All the facts should be consistent with the hypothesis.
- (3) That the circumstances should be of a conclusive nature and tendency.
- (4) The circumstances should, to a moral certainty, actually exclude every hypothesis, but the one proposed to be proved.¹

(xiv) The discussion of evidence must not lead to a perverse conclusion. Perversity may arise from over-emotionalism or want of proper logic or what may be called 'misapplication of common sense'.

(xv) Where a witness has given false evidence on one point of the case, he may be believed on other points as well.² His evidence is *prima facie* unreliable, and if the evidence is not reinforced by something else, it is highly unsafe to accept it.³ The Judge is not bound to rely upon the oath of people who are clearly shown to have given false evidence on one branch of the case.⁴ But there is nothing illegal if Judge accepts one portion of the testimony of a witness and rejects the other.⁵

(xvi) Witnesses who are natural witnesses of an occurrence should not be disbelieved simply because they happen to be related by relationship or by otherwise to the party on whose behalf they give evidence.⁶ The Judge should consider the evidence of the witnesses on merits and then should decide whether or not they have given true evidence.⁷

(xvii) Where one witness alleges the happening of a certain fact and another witness denies the happening of the fact and both claim to have been present at the scene of occurrence, greater weight, other things being equal, should be given to the witness who alleges the affirmative.⁸ "Upon general principles affirmative

1. *Empress v. Hosh Nak*, 1881 A. W. N. 139.
2. *Ujaga v. Emperor*, A. I. R. 1933 All. 834.
3. *Ashiq Ali v. Emperor*, 1936, A. W. R. 633.
4. *Chuaraja Singh v. Bhuneshwari Prasad*, (1936) 161, I. C. 881 (P. C.).
5. *Pardeshi v. Devanath*, A. I. R. 1936 Nag. 273.
6. *Har Sahai v. Rex*, A. I. R. 1949 All. 582.
7. *Raghubar Dayal v. Emperor*, A. I. R. 1934 All. 735.
8. *Deby Prasad v. Dowlu Singh*, (1844) 314 I. A. 347 (357).

is better than negative evidence. A person deposing to a fact which he states he saw, must speak either truly, or must have invented his story, or it must be sheer delusion. Not so with respect to negative evidence ; a fact may have taken place in the very sight of a person who may not have observed it ; and if he did observe, may have forgotten it".¹ The testimony of a person who testifies that a certain conversation took place is of more value than that of one who says that it did not.²

(xviii) It is not proper to appreciate evidence with prejudice and suspect everything and everybody.³

(xix) The fact that a witness had given evidence in other cases is not always a legitimate objection to his credibility though it may be a legitimate objection to a man's credit that he is a professional witness.⁴

(xx) When the oral testimony adduced in an action is directly conflicting and irreconcilable, the only safe side for the Judge is that afforded by the conduct of the parties and the contents of the documents produced.⁵

(xxi) The maxim "*falsus in uno falsus in omnibus*" (If a witness is false on one point, his whole story is deemed to be false) is not recognized in India and it is only if a witness is found to be wholly untrustworthy that no part of his evidence can be accepted.⁶

1. *Per Sir H. Jenner in Chambers v. The Queen's Proctor*, 2, Curt. 415, 434.

2. (1841-46) 3 Moo. Ind. App. 347 (357) (P. C.).

3. ('88) 15 Cal. 684 (693, 697).

4. ('72) 18 Suth. W. R. 285 (285) (P. C.).

5. ('09) 31 All. 116 (127).

6. ('48) A. I. R. 1948 Oudh. 88 (93) 22 Luck. 407 (D. B.). •

CHAPTER VIII

JUDGMENTS IN APPEALS

Contents of Appellate Judgment.—Order XLI rule 31 of the Civil Procedure Code enshrines what an appellate judgment in civil cases must contain. The essentials of such judgments enumerated by the rule are :—

- (a) the points for determination ;
- (b) the decision thereon ;
- (c) the reasons for the decision ; and
- (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled.

As regards the contents of an appellate judgment in criminal cases section 367 of the Code of Criminal Procedure applies.¹ To be more practical the appellate judgment should be modelled on the lines of judgment of a trial Court. Where a judgment of an appellate Court stated merely that the lower Court's order contained a full statement of facts, its application of evidence was correct and the appellant's pleader's arguments were not convincing, it was held that the judgment failed to satisfy the requirements of the section 367, and the irregularity vitiated the judgment.² So long as the appellate Court writes a judgment from which the High Court can gather what the decision really was, that is, in general, is sufficient compliance with this section.³

Judgment how commences.—An appellate judgment should begin with sentence indicating the nature of the dispute which the judgment proposes to decide. Thereafter the facts giving rise to appeal should be given. The facts may be stated under four different heads, namely :

- (i) 'the facts as alleged by the plaintiff or the applicant in a civil case or the prosecution in a criminal case ;
- (ii) 'the facts as alleged by the defendant or the opposite party in a civil case, and by the accused in a criminal case ;
- (iii) 'findings of fact and law as recorded by the trial Court for or against either side ; and
- (iv) 'findings of fact and law which are challenged by the appellant and the respondent in the appeal.'

1, Jamait Mullick, (1907) 35 Cal. 138.

2. Shanmukh, (1930) 32 Bom. L. R. 353.

3. Abdul Rahman, (1935) 62 Cal. 749.

The narration of facts should be neither too lengthy nor too brief. But it should be such so as to make the judgment self-contained and complete. To appreciate the appellate judgment, reading of the judgment of the trial Court should not be necessary. The appellate judgment should stand by itself.¹ It should be possible to follow it without any reference to the judgment of the trial Court.²

Points for Determination.—After narrating facts the appellate Judge should state the points for determination in appeal though the practice is to discuss them one by one without enumerating them all at one place. The points for determination should be set forth in such a way that a mere cursory glance may reveal to the Judge himself and to the superior Court before which such judgment may come up in second appeal or revision, that nothing which is material has been omitted from either side.³

Decision and Reasons for Decision.—Then the appellate Judge without writing an elaborate judgment state in brief though in unambiguous language the objects raised in appeal and how they were disposed of.⁴ The Judge should give reasons for the findings he arrives at.⁴ The Judge should discuss evidence on all the points in issue. The Judge should not merely restate the findings of the trial Court and verdict that the judgment of the trial Court was substantially right. The appellate Judge should himself hear and discuss the evidence. Where the Judge in an appeal against an order under section 476 of the Criminal Procedure Code, simply said, "Heard the appellant. I do not think it necessary to direct prosecution. Appeal dismissed," held that it was no judgment.⁵ Likewise it is no judgment to say merely "I have gone through the record of the case and the conviction is sound" or "The Magistrate has gone carefully through the evidence. There are many discrepancies in depositions of witnesses" or "All the points raised in the case have been considered by the Court below and have been rightly decided" or "Nothing has been urged in appeal which affects the reasons given by the trial Court for conviction." The judgment should not be too succinct and of a stereotyped nature so as to suit any judgment of an appellate Court.⁶ The judgment must bear marks of such intelligent appreciation on the part of the appellate Court of the necessary

1. *Ghous Bux v. Emperor*, A. I. R. 1937 Sind. 26.

2. *Abdul Wahid v. Emperor*, A. I. R. 1937. Pesh. 88.

3. *Ekcowri Mukerjee v. Emperor*, (1904) 32 Cal. 178.

4. *Gyan Prakash Das v. Dukhan Kuar*, A. I. R. 1938 Pat. 69.

5. *Nitya Gopal v. Nani Gopal*, A. I. R. 1931 Cal. 454.

6. *Harinath Chaudhry v. King Emperor*, A. I. R. 1921 Pat. 487.

facts and materials as would warrant the High Court to infer that the conclusions were properly arrived at by the lower appellate Court.¹

Civil Appeals.—In civil appeals the appellate Court should not merely state that there are or not *grounds* for differing from the judgment of the trial Court. But the Court should analyse evidence afresh and form its own conclusions. However, the appellate Court should not interfere with the findings of facts unless it believes that the trial Court has been wrong in its findings. The judgment should show that the findings of the trial Court and the reasons therefor have been fully considered by the appellate Court.² Where the findings of the trial Court are reversed in appeal, the appellate Judge should give reasons for reversion³, and should deal with the various points raised by the trial Court.⁴ But if the reasons given by the appellate Court are so cogent as to justify such finding, discussion on other less convincing reasons given by the trial Court is not necessary.⁵

Criminal Appeals.—In criminal appeals, the appellate Court should set forth the prosecution case, the defence case and how the former has been established. Like the trial Court, the appellate Court should also see that the prosecution case is true and the guilt of the accused has been proved beyond all doubts. The appellate Court should not merely hold that unless reasonable ground is advanced for differing from the trial Court the appellate Court must accept the findings of the trial Court as true. Further the appellate Court should consider the case of the each accused. "The judgment of the appellate Court should be self-sufficient, that is to say, should contain all the necessary materials to enable the High Court to form a conclusion as to the propriety of the conviction of each of the accused having regard to the various offences with which each of the accused was charged and to enable the High Court to come to a conclusion as to the correctness of the sentence upon each of the accused."⁶

The appellate Court should examine evidence and should examine even if the appellant is absent. When the appellate Court admits additional evidence, the Court should record reasons for its admission.⁷ Further the appellate Court should specify the

1. *Maroti v. Kesabai*, A. I. R. 1927 Nag. 88.
2. *Nani Patra v. Madhusudan Bera*, (1943) 73 C. L. J. 196.
3. *Nani Patra v. Madhusudan*, *supra*.
4. *Alla Annapurnamma v. P. L. Swami*, A. I. R. 1946, Mad. 215.
5. *Sashi Kumari Devi v. Dharendra Kishore Ray*, A. I. R. 1941 Cal. 248.
6. *Arindara Raghunchi v. Emperor*, (1916) 20 C. W. N. 1236.
7. Order XLI, Rule 27 (2), C. P. C.

points to which the evidence is to be confined and record its proceedings on the points so specified.¹

Grant of Relief.—In civil appeals the appellate Court should specify that the appeal is allowed or dismissed and the suit of the plaintiff is decreed or dismissed according to the nature of decision in the appeal. Where the appeal is partly allowed and partly disallowed, the appellate Court should state in clear terms to what extent it intends to modify the relief granted by the trial Court.

Where the appellate Court remands a case to the trial Court for retrial there should be a clear specification to that effect in the judgment. Where the appellate Court confirms some of the findings of the trial Court and orders retrial on the remaining points, again the appellate Court should indicate in the judgment what points have been finally decided and on what points fresh trial is to take place.

Order for Costs.—The appellate Court should also give direction as to costs in the appeal. Where an appeal is allowed, the appellant gets costs as the rule in 'costs shall follow the event', or *vice versa*. Where the appellate Court does not allow costs to either party, or decides that 'costs shall not follow the event', the Judge should record reasons for such discretion in the judgment. If the Judge intends to pass orders about the costs of the trial Court, the Judge should specifically lay down how and in what manner those costs shall be paid. Where the case is remanded for retrial, costs of the appeal are sometimes awarded by the appellate Court and sometimes to abide by the decision in the suit. Whatever is decided, there should be clear specification to that effect to avoid confusion.

1. Order XLI, Rule 29, C.P.C.

CHAPTER IX
MODEL JUDGMENTS

No. 1

(Malicious Prosecution)

In the Court of Munsif
Meerut

Present : Shri 'M'.

Suit No. 202 of 1963

Shyam Lal..... Plaintiff.

V.

Satish..... Defendant.

Judgment

This is a suit filed for the recovery of Rs. 1000 as damages for malicious prosecution. The plaintiff's allegations are that the defendant lodged a false complaint against him under section 426 I. P. C. on December 20, 1962 in the Court of City Magistrate Meerut that the plaintiff had destroyed his crops. The defendant knew that the said complaint was false and without any reasonable or probable cause. That the said complaint was filed maliciously and dismissed by the Court on July 10, 1963 and the plaintiff was acquitted. In consequence of malicious prosecution, the plaintiff suffered great mental pain and has been greatly lowered in the estimation of the society and had to spend a lot in defending himself against the said charge. On these allegations the plaintiff claims Rs. 600/- as special damages and Rs. 400/- as general damages, Rs. 1000/- in all.

The defendant has contested the suit. The defendant denies that the complaint was false or malicious or lodged without any reasonable or probable cause. The complaint was true. The defendant further says that the damages claimed by the plaintiff are excessive.

From the pleadings of the parties, the following issues have arisen:—

Issues

1. Was the complaint filed by the defendant false and filed without any reasonable or probable cause?

2. Was the same malicious ?
3. To what amount of damages, if any, is the plaintiff entitled ?
4. To what relief, if any, is the plaintiff entitled ?

Findings

Issues Nos. 1 and 2.—These two issues can be conveniently tried together. The plaintiff has examined himself (P. W. 1) and has produced two witnesses Hari Ram (P. W. 2) and Sri Ram (P. W. 3) to prove that he was not at Meerut on December 15, 1962, the alleged date of occurrence and had gone to Delhi in a marriage party and as such he could not be present on the day of occurrence of the incident at Meerut. But the plaintiff has failed to produce any documentary evidence to prove that he was in Delhi on the date of occurrence of the incident.

The defendant has examined himself (D. W. 1) and has produced three other witnesses Brij Behari (D. W. 2), Ram Autar (D. W. 3) and Abrar Hussain (D. W. 3) who all have deposed on oath that the plaintiff was present on December 15, 1962, at 10 A. M., the date and time of alleged occurrence, on the defendant's field and destroyed the defendant's crops.

The plaintiff in support of his innocence further relies on the order of his acquittal passed by the Court on July 10, 1963.

The essentials which a plaintiff must prove in a case for malicious prosecution were laid down in the case of *Balbhadar Singh v. Badri Shah*.¹ Those essentials are—

1. That the plaintiff was prosecuted by the defendant.
2. That the plaintiff was innocent of the charge upon which he was tried.
3. That the prosecution was instituted against him without any reasonable or probable cause.
4. That it was due to malicious intention of the defendant and not with a mere intention of carrying the law into effect.

According to the Privy Council, the proposition No. 2 should be "that the proceedings complained of terminated in favour of the plaintiff if from their nature they were capable of so terminating."

The plaintiff has not been able to establish that the complaint filed by the defendant was malicious or the same was filed without any reasonable or probable cause. The acquittal of the plaintiff

1. 1926, A. L. J. 453.

by the Criminal Court is no proof of the innocence of the plaintiff. It has been held in several leading cases viz. *Gaya Prasad v. Bhagat Singh*¹, *Venkapathi v. Bullapa*,² *Balbhaddar Singh v. Badri Shah*, (referred to above) that the judgment of a Criminal Court can be admitted in the Civil Court only for the purpose of establishing that the prosecution had terminated in favour of the plaintiff and not as a proof of the grounds on which the judgment had proceeded. The judgment as such can be used only for the purpose of showing that the plaintiff was acquitted and not for the purpose of establishing the innocence of the plaintiff.

Taking into consideration the evidence adduced by both the parties in the case, it cannot be inferred that the complaint lodged by the defendant was motivated by malice or was filed without any probable or reasonable cause. The issues, therefore, are decided against the plaintiff and in favour of the defendant.

Issue No. 3.—In view of the findings on issues Nos. 1 and 2, this issue is also decided against the plaintiff. The plaintiff is not entitled to any damages.

Issue No. 4.—In view of my findings on issues Nos. 1 and 2, the plaintiff is not entitled to the relief claimed.

Order

The plaintiff's suit is dismissed with costs to the defendant.

(Sd.) M.

Munsif Meerut

Dated 10-1-64.

No. 2

In the Court of City Munsif

Meerut

Present : Shri 'N', City Munsif

Suit No. 302 of 1963

A.....Plaintiff

V.

B.....Defendant

1. 30 All. 525.

2. 56 Mad 641.

This is a suit filed by the plaintiff for the recovery of the properties *P* and *Q* in the possession of the defendants. The plaintiff's allegations are that one *C* died on 16-2-1958. That after *C*'s death his widow '*W*' adopted the plaintiff as his son on 17-4-1958. Thus the plaintiff claims himself to be the nearest heir of '*C*' and claims the possession of the two properties *P* and *Q* in wrongful possession of the defendant since 1st February, 1957, as alleged by him.

The suit has been contested by the defendant. The defendant says that the property *P* belongs to him and not to '*C*' as alleged by the plaintiff. The defendant further contends that the plaintiff is not the adopted son of '*C*' and was never adopted by '*W*'. Lastly, '*W*' had no authority to adopt from her husband and as such the plaintiff's adoption by '*W*' is also invalid.

From the pleadings of the parties the following issues have arisen:—

1. Did '*W*' adopt the plaintiff as a son ?
2. Was the adoption invalid because '*W*' had no authority from her husband to adopt ?
3. Was '*C*' owner of the property '*P*' ?
4. To what relief, if any, is the plaintiff entitled ?

Findings

Issue No. 1.—The plaintiff has examined himself and five witnesses *L. M. P. R.* and *S.* who all state on oath that the plaintiff was adopted by '*W*' on 17-4-1958 and that the ceremonies of giving and taking and that of *Hawan* were performed in their presence. The defendant has not produced any satisfactory evidence in support of his contention that the plaintiff was not adopted by '*W*'. The Hindu Adoption and Maintenance Act of 1956 does not prescribe the performance of any special ceremonies for a valid adoption. The adoption of the plaintiff by '*W*' is fully proved. The issue, therefore, is decided in favour of the plaintiff that the plaintiff was adopted by '*W*'.

Issue No. 2.—Section 8 of the Hindu Adoptions and Maintenance Act of 1956 empowers a female Hindu to adopt a son or a daughter. No previous authority from her husband is required. Prior to the passing of the Act under pure Hindu Law, such previous authority from her husband was necessary. That law is no more good law now. Therefore, the adoption of the plaintiff by '*W*' is valid and not invalid for the reason advanced by the defendant that '*W*' had no authority from her husband to adopt. Issue is decided in favour of the plaintiff.

Issue No. 3.—On this issue the plaintiff has produced five witnesses *L. M. P. R. and S.* who state on oath that *C* was the owner of the property *P* and has been realising rents of the same and that the defendant entered into wrongful possession of the same on February 1, 1957. Besides, the plaintiff has produced a sale-deed Exh. 1 executed by one '*T*' in favour of '*C*' on June 2, 1952. On the otherhand the defendant has produced two witnesses *G* (D. W. 1) and *H* (D. W. 2) who depose on oath that the defendant has been in possession of the property *P* for a long time. But these two witnesses have failed to depose from whom the defendant got the property *P*. Weighing the evidence produced by both the parties on the issue, I am of the opinion that the plaintiff has established the ownership of *C* to property *P* and consequently his ownership as the adopted son of *C*. The issue is decided accordingly.

Issue No 4.—In view of my findings on issues Nos. 1, 2 and 3, the plaintiff is entitled to the relief claimed.

Order

The plaintiff's suit for possession of properties *P* and *Q* is decreed with costs.

(Sd.) N.

City Munsif

Meerut.

Dated 8-12-63.

No. 3

In the Court of Civil Judge

Meerut

Present Shri 'K', Civil Judge

Suit No. 204 of 1962

Pritam Dass.....Plaintiff.

V.

Iqbal.....Defendant No. 1.

Smt. Ram Pyari w/o Prof. Ram Chandra...Defendant No. 2.

Mahesh s/o of Prof. Ram Chandra.....Defendant No. 3.

Judgment

This is a suit filed by the plaintiff for specific performance of the contract of sale and in the alternative for the return of Rs. 15000/- advanced by him to the defendant. The plaintiff's

allegations are that Dr. Mohd. Hanif was the owner of the house described in Schedule annexed to the plaint. Dr. Mohd. Hanif died in 1940 leaving only a house and Iqbal defendant No. 1 who was minor at that time. After his death Dr. Mohd. Hanif's friend Prof. Ram Chandra took upon himself the responsibility of bringing up and educating Iqbal and managing the latter's property. Defendants Nos. 2 and 3 are the widow and son of Prof. Ram Chandra. Iqbal graduated with honours in 1952. After his graduation he wanted to proceed to England for higher studies. In order to enable him to go to England for higher studies, Prof. Ram Chandra who had been acting as *de facto* guardian of Iqbal persuaded the plaintiff to purchase the house for Rs. 15000/-, on the condition that he would re-transfer the house if the money was paid back to him in five years. Prof. Ram Chandra also agreed to stand surety for the same. The plaintiff advanced the sum of Rs. 15000/- to Iqbal who after having received the amount proceeded to England. Before he could execute the sale-deed Prof. Ram Chandra suddenly died leaving behind Smt. Ram Pyari, his widow defendant No. 2 and Mahesh, his son defendant No. 3. The defendant No. 1 has also not executed the sale-deed of the said house in favour of the plaintiff nor has returned the sum of Rs. 15000/- advanced to him. The plaintiff, therefore, has filed this suit for the specific performance of the contract of sale and in the alternative for the return of the sum of Rs. 15000/- advanced by him to the plaintiff. The defendants Nos. 2 and 3 are impleaded as parties to the suit as heirs of Prof. Ram Chandra because it was only on the pursuation of Prof. Ram Chandra and his standing surety for the defendant No. 1 that the plaintiff advanced the sum of Rs. 15000/- to the defendant No. 1.

The suit is being contested by the defendants. The defendants have filed separate written statements. The defendant No. 1 contends that at the time when the amount was advanced, he was a minor and Prof. Ram Chandra being a *de facto* guardian for him had no right to contract for the sale of his house. The contract is void *aba initio*. As to the refund of the sum of Rs. 15000/-, he pleads that he was a minor at that time and as any amount advanced to a minor cannot be recovered back, he is not liable to return the same. His further contention is that the amount of Rs. 15000/- does not fall within the periphery of the term 'necessaries' within the meaning of section 68 of the Indian Contract Act. He further pleads that the suit is barred by limitation. The defendants Nos. 2 and 3 also deny their liability for the refund of the amount. They even deny that the house in question belonged to Dr. Mohd. Hanif. They also take the plea of limitation to the suit.

From the pleadings of the parties the following issues have arisen: —

Issues

1. Was Dr. Mohd. Hanif owner of the house in question?
2. Did the plaintiff advance Rs. 15000/- to the defendant No. 1 ?
3. Did Prof. Ram Chandra merely persuade the plaintiff to advance the sum of Rs. 15000/- or also stood surety for the payment ?
4. Is the contract of sale of the house entered into by Prof. Ram Chandra binding on the defendant No. 1 ?
5. Does the sum of Rs. 15000/- fall within the definition of the term 'necessaries' and is as such refundable by the defendant No. 1 to the plaintiff ?
6. Are the defendants Nos. 2 and 3 liable to refund the sum of Rs. 15000/- to the plaintiff ?
7. Is the suit barred by the law of limitation ?
8. To what relief, if any, is the plaintiff entitled ?

Findings

Issue No. 1.—The plaintiff has produced two witnesses H, (P.W. 1) and N, (P.W. 2), who depose on oath that Dr. Mohd. Hanif was the owner of the house in question. The plaintiff has also filed a sale-deed, Exh. 1, executed by one Girdhari Lal in favour of Dr. Mohd. Hanif on 18-10-1936. The defendants Nos. 2 and 3 have not produced evidence sufficient to refute the evidence adduced by the plaintiff. I am, therefore, of the view that Dr. Mohd. Hanif was the owner of the house and decide the issue in the affirmative.

Issue No. 2.—The plaintiff has examined himself and produced two witnesses C. (P.W. 3) and D. (P. W. 4) who depose on oath that the plaintiff advanced Rs. 15000/- to the defendant No. 1. The defendant No. 1 himself admits the advance of Rs. 15000/- to him by the plaintiff. As such denial by defendant Nos. 2 and 3 of the advance is not tenable. I, therefore, decide this issue also in the affirmative.

Issue No. 3.—The evidence on this issue is merely the testimony of the plaintiff. He has not produced any other evidence to warrant his conviction that Prof. Ram Chandra stood surety for the payment. The allegation has been explicitly denied by the defendants Nos. 2 and 3. Mere persuasion does not amount to standing as surety. I, therefore, decide that Prof. Ram Chandra merely persuaded the plaintiff to advance Rs. 15000/- to Iqbal, the defendant No. 1 and did not stand surety for the payment. Issue is decided accordingly.

Issue No. 4.—On this issue the plaintiff's version is that Prof. Ram Chandra was acting as the guardian of the defendant No. 1, as such the contract of sale made by Prof. Ram Chandra is binding on the defendant No. 1. The defendant No. 1 contends that Prof. Ram Chandra was acting at best as his *de facto* guardian and as such the contract of the sale of the house is not binding on him. In the famous case of *Mohd. Hanif v. Vakil Ahmed*¹ the *Supreme Court of India* held that "Under the Mohammadan Law a person who has charge of the person or property of a minor without being his legal guardian, and who may, therefore, be conveniently called a '*de facto* guardian' has no power to convey to another any right or interest in immovable property which the transferee can enforce against the infant." A transfer by a *de facto* guardian is not merely voidable but void.² I, therefore, hold that the contract for the sale of the house entered into by Prof. Ram Chandra is not binding on the defendant No. 1. The issue is decided in the negative.

Issue No. 5.—Section 68 of the Indian Contract Act lays down that "where a person incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be re-imbursed from the property of such incapable person." Whether a particular article supplied is a necessity or not is to be decided with reference to the facts and circumstances of each case. In the instant case, the advance of Rs. 15000/- to the defendant No. 1 in the circumstances in which he was placed cannot be said to be a necessity. Higher Education in England cannot be held to be a necessity for him. The issue is decided accordingly.

Issue No. 6.—The plaintiff holds the defendant No. 1 liable on the ground that he has been benefitted by him and defendants Nos. 2 and 3 are liable on the plea that Prof. Ram Chandra stood surety for the refund and as the defendants Nos. 2 and 3 are heirs of Prof. Ram Chandra, they are liable to refund the same.

As already discussed a contract for a minor by a *de facto* guardian is not merely voidable but void. A void contract does not engender any rights or liabilities. As to the contracts of minors it has been laid down in the case of *Mohori Bibi v. Dharmo Dass Ghose*³ for all times to come that the *contract is void altogether and creates no rights and liabilities*. Taking the law into consideration, it is proper to hold that the defendant No. 1 is not bound to refund the

1. A. I. R. 1952 S. C. p. 358.

2. *Imambandi v. Mutsaddi*, (1918) I. A. 873.

3. 30 Cal. 539.

sum of Rs. 15000/- to the plaintiff. As to the liability of defendant Nos. 2 and 3 it may be held that they are not liable as Prof. Ram Chandra merely persuaded the plaintiff to advance the sum to the defendant No. 1 and did not stand surety for the refund of the same. I, therefore, hold that neither the defendant No. 1 nor the defendants Nos. 2 and 3 are bound to refund the sum of Rs. 15000/- to the plaintiff. The issue is decided accordingly.

Issue No. 7.—The defendant's version on the issue is that the suit has been filed beyond three years from the date of contract and as such the suit is barred by Article 113 of the Indian Limitation Act 1908. The period of limitation under the said Article of the Limitation Act, 1908 begins to run from the date fixed for the performance of the contract and where no such date has been fixed when the plaintiff comes to know that the performance is refused. In the instant case no date for performance was fixed. The plaintiff could have knowledge of the refusal when the defendant No. 1 refused to execute the sale deed. The plaintiff came to know of the refusal on the return of the defendant No. 1 and this took place within three years of the date of the suit. I am, therefore, of the opinion that the suit is not barred by the law of limitation. The issue is decided in the negative.

Issue No. 8.—In view of the findings on issue Nos. 4, 5 and 6 above the plaintiff is not entitled to any relief.

Order

The suit is dismissed with costs to the defendants.

(Sd.) 'K.'

Civil Judge Meerut.

Dated 8-10-1963.

No. 4.

In the Court of City Munsif Meerut

Present : Shri V. K. Bansal.

Suit No. 317 of 1963

A.....Plaintiff

V.

B.....Defendant

Judgment

The plaintiff has brought this suit for the recovery of land L. M. N. O. described at the foot of the plaint by demolition of constructions, raised thereon by the defendant. The plaintiff's

allegations are that he is the owner of a plot of land marked as *R. S. T. U.* at the foot of the plaint in Saket at Meerut. The plaintiff purchased the said land in suit through a sale-deed dated 12-3-1948 for a sum of Rs. 500/- and constructed a house on a portion of it at the cost of Rs. 10000/- leaving a part his land *L. M. N. O.* for his *Sehan*. The defendant is the owner of the adjacent house shown by letters *G. H. I. J.* at the foot of the plaint. The defendant constructed a room *U. V. W. X.* in April 1951 and in constructing the said room, the defendant has encroached upon the plaintiff's land *L. M. N. O.*

The defence case is that the plaintiff is not the owner of the land in dispute and has never been in possession of the land in suit within 12 years of the date of the suit. Therefore, the plaintiff's suit is barred by limitation. Further the plaintiff's suit is barred by the principle of acquiescence.

Issues

From the pleadings of the parties, the following issues have arisen:—

1. Is the plaintiff owner of the land in suit ?
2. Has the plaintiff not been in possession of the land in suit within 12 years of the date of the suit ? If so, is the suit barred by limitation ?
3. Is the suit barred by the principle of acquiescence ?
4. To what relief, if any, is the plaintiff entitled ?

Findings

Issue No. 1.—The plaintiff has filed the sale-deed *Exh. 1* of the land in suit, dated 12-3-1948, which fully establishes the ownership of the plaintiff to land. Besides the plaintiff has produced two witnesses Ram Lal (*P. W. 1*) and Shyam Lal (*P. W. 2*) who depose on oath that the plaintiff is the owner of the land (*L. M. N. O.*) in suit. The defendant has not produced any evidence except his oral testimony, to controvert the plaintiff's ownership to the land. I, therefore, decide that the plaintiff is the owner of the land in suit. Issue is decided accordingly.

Issue No. 2.—On this issue the defendant's version is that the land in dispute has been lying vacant and the plaintiff has never exercised his ownership over the land in suit within 12 years of the date of the institution of the suit. In issue No. 1, the ownership of the plaintiff to land has been proved and it has been repeatedly held that "title carries with it the presumption of possession specially in case of vacant sites, the presumption in such

cases is that the true owner was in possession.”¹ In *Badri Narain Jha v. Raghunandan Jha*² the Court observed that in the case of open, waste or jungle lands which do not admit of enjoyment by acts of ownership in the same manner as other property or in the case of vacant lands the presumption may properly be drawn of possession in favour of a person having the title. On the basis of the above rulings the land in suit being a vacant land, the plaintiff may be presumed to be in possession. The defendant has not been able to produce any evidence sufficient to establish his adverse possession. I, therefore, decide that the suit is not barred by limitation. Issue is decided accordingly.

Issue No. 3.—The defendant pleads that he constructed room on the land in suit, but the plaintiff never objected to the construction, on the contrary he encouraged the defendant to expend money on the construction. Therefore, the plaintiff's suit is barred by acquiescence. The essentials of the principle of acquiescence were discussed in *Jai Narain v. Jafar Beg.*³ The Court held: “It has been said that the acquiescence which will deprive a man of his legal rights must amount to fraud, and in my view a man is not to be deprived of his legal rights unless he has acted in such a way as would make it fraudulent for him to set up those rights. What then, are the elements or requisites necessary to constitute fraud of that description? In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it, he is in the same position as the plaintiff and the doctrine of acquiescence is founded upon conduct with a knowledge of his legal rights. Fourthly defendant, the possessor of the legal rights, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he had done either directly or by abstaining from asserting his legal right. Where all these elements exist, there is fraud of such a nature as will entitle the Court to restrain the possessor of the legal right from exercising it, but, in my judgment, nothing short of this will do.”

There is no evidence on record in the present case to show that the conduct of the plaintiff was fraudulent or that he acted

1. 1944 Nag. 20; 1944 Bom. 207; 1941 Oudh. 436.

2. 1948 Patna 208.

3. 1926 A. L. J. 355.

in such a way as to make it fraudulent for him to set up his rights. I, therefore, hold that the suit is not barred by the principle of acquiescence. Issue is decided accordingly.

Issue No. 4.—In view of my findings on issues Nos. 1 to 3 above, I hold that the plaintiff is entitled to a decree for possession by demolition of constructions over the land in suit.

Order

Plaintiff's suit for possession of land by demolition of the constructions standing on the land is decreed with costs. The defendant is given one month's time to remove the material from the land in suit and give vacant possession of the land to the plaintiff failing which the plaintiff will be entitled to have the construction demolished through the Court's amin at the defendant's costs.

(Sd.) V. K. Bansal.

City Munsif Meerut.

Dated 1-8-1963.

No. 5.

— — —

In the Court of Civil Judge
Meerut.

Suit No. 215 of 1963

Present Shri P. C. Kapoor
Civil Judge Meerut.

D.....The plaintiff

V.

A.....The defendant

Judgment

The plaintiff has filed this suit for the recovery of money paid to the defendant on account of sale of some items of family properties of the latter. The plaintiff's allegations are that the defendant, the father of a joint Hindu family, sold some items of properties belonging to the joint family consisting of his sons *B* and *C*. Subsequently the sons instituted a suit against the plaintiff impleading the defendant, their father, as a party to the suit for setting aside the sale on two grounds: first that the sale was without consideration and secondly that there was no legal necessity for the sale. The Court decreed the suit in favour of

the sons and set aside the sale. Now the plaintiff has instituted the instant suit against the defendant for the refund of the sale price.

The defendant has contested the suit. The contention of the defendant is that the sale-deed dated 8-12-54 was without consideration and that no money was paid to the defendant. Besides, question was an issue in Suit No. 327 of 1955 in which both the plaintiff and the defendant were parties. In the said suit the Court held the sale to be without consideration. Therefore, the decision in that suit operates as *res judicata* between the parties and the plaintiff cannot agitate the plea of consideration again. Further, the defendant contends that as no interest was agreed between the parties, the plaintiff is not entitled to any interest.

Issues

From the pleadings of the parties, the following issues have arisen:—

1. Did the defendant receive any consideration for the sale dated 8-12-1954 ?
2. Is the suit barred by *res judicata* ?
3. Is the plaintiff entitled to any interest ?
4. To what relief, if any, is the plaintiff entitled ?

Findings

Issue No. 1.—The plaintiff has produced before the Court the sale-deed dated 8-12-1954, Exhibit 1. But he has not produced any of the marginal witnesses to the sale-deed. Further, he has not been able to adduce any evidence to warrant that he paid Rs. 10,000/- to the defendant at the time when the sale-deed was executed. I, therefore, hold that the defendant did not receive any consideration for the sale-deed dated 8-12-1954. The issue is decided accordingly.

Issue No. 2.—On this issue Counsel for the defendant contends that in Suit No. 327 of 1955 both the plaintiff and the defendant were parties and whether the sale-deed in question was for consideration or not was an issue in that case, therefore, the plaintiff cannot raise the issue again in the present suit. The response of the Counsel for the plaintiff is that the Suit No. 327 of 1955 was decided *ex parte* and further the question whether the said sale was for consideration or not was not necessary to be decided between the defendants. Therefore, this suit is not barred by *res judicata*.

The principle of *res judicata* applies between co-defendants where certain conditions are satisfied. In the case of *Cottingham v. Earl of Shrewsbury*,¹ Wigram V. C. observed that "If a plaintiff cannot get his right without trying and deciding a case between co-defendants, the Court will try and decide that case, and the co-defendants will be bound ; but if the relief given to the plaintiff does not require or involve a decision of any case between co-defendants, the co-defendants will not be bound as between each other by any proceeding which may be necessary only to the decree the plaintiff obtains." In *Munni Bibi v. Triloki Nath*,² their Lordships of the Privy Council laid down the following principles for the applicability of the rule of *res judicata* between co-defendants—

(1) there must be conflict of interest between the defendants concerned ;

(2) it must be necessary to decide this conflict in order to give the plaintiff the relief he claims ; and

(3) the question between the defendants must have been finally decided.

The essentials to constitute the bar of *res judicata* laid down by section 11 of C. P. C. are—

(1) the matter must be directly and substantially in issue in two suits ;

(2) the prior suit must have been between the same parties or person or persons claiming under them ;

(3) such parties must have litigated under the same title in the former suit ;

(4) the Court which determined the earlier suit must be competent to try the later suit or the suit in which such issue is subsequently raised ; and

(5) the question directly and subsequently in issue in the subsequent suit should have been heard and finally decided in the former suit.

In the *Duchess of Kingston*³, Sir William De Gray summarised the principle of *res judicata* as follows :

"From the variety of cases relating to judgment being given in evidence in civil suits these two deductions seem to follow as.

1. 1843, 3 Hare 627, p. 638.

2. 58 I. A. 158.

3. 2 Smith's Leading cases, 11th Edition, p. 731.

generally true : that a judgment of a Court of concurrent jurisdiction, directly speaking on the point, is as a plea, a bar, or as evidence, conclusive between the same parties, upon the same matter, directly in question in another Court, secondly, that the judgment of a Court of exclusive jurisdiction, directly on the point, is in like manner, conclusive upon the same matter between same parties ; coming incidentally in question in another Court for a different purpose. But neither the judgment of a Court of a concurrent or exclusive jurisdiction is evidence of any matter which came collaterally in question, though within their jurisdiction, nor of any matter incidentally cognizable nor of any matter to be inferred by argument from the judgment." Thus the former judgment must be :

- (1) that of a Court of competent jurisdiction ;
- (2) directly speaking upon the matter in question in the subsequent suit ; and
- (3) between the same parties (Chitaley & Rao).

In this suit the plaintiff's contention is that the matter was not heard and finally decided by the Court, an essential condition for the applicability of the principle of *res judicata*. It has been repeatedly held that an *ex parte* decree may operate as *res-judicata*, but only in respect of the relief claimed in the plaint.

In the instant suit all the essentials for the applicability of the principle of *res judicata* between the co-defendants are present. The plaintiff in this suit, who was defendant in the former suit, took the same plea in the former suit that the sale-deed was for consideration and so the defendant A in both the suits asserted that the sale-deed was without any consideration. In the former suit there was a conflict of interest between the co-defendants, and therefore there was necessity to decide the same in the former suit and the matter was finally decided in that suit. I, therefore, hold that the plaintiff's suit is barred by the rule of *res judicata* in this case. The issue is decided accordingly.

Issue No. 3.—As discussed in issue No. 1 above the plaintiff has not produced any satisfactory evidence to establish that the sale-deed was for consideration and he paid Rs. 10,000/- to the defendant at the time of the execution of the sale-deed. Moreover, this plea is barred by the principle of *res judicata* as discussed in Issue No. 2 above. Therefore, the question of payment of interest does not arise at all. The issue is decided accordingly.

Issue No. 4.—In view of my findings given above, the plaintiff is not entitled to any relief.

Order

The plaintiff's suit is dismissed with costs to the defendant.

(Sd.) P. C. Kapoor

Civil Judge, Meerut.

Dated 6-9-1963.

No. 6.

In the Court of Munsif

Meerut.

Present : Shri N. G. Goel

Munsif

A.....*Plaintiff*

v.

B.....*Defendant*

Order

The plaintiff has filed this application under Order XXXIX, Rule 1, C. P. C. for a temporary injunction restraining the defendant from raising constructions on the land in dispute. The land is described at the foot of the application. The plaintiff-applicant contends that in case the temporary injunction prayed for is not granted, he will suffer an irreparable injury. His further plea is that there is a serious question to be tried at the hearing and *status quo* should be maintained. The defendant's objection is that the plaintiff has got no *prima facie* case and the balance of convenience is not in his favour, nor the plaintiff will suffer any irreparable injury by the non issue of injunction. On the other hand the defendant will suffer great loss if the injunction is granted against him.

The general principles governing grant of temporary injunctions are—

1. That there is a *bona fide* contention between the parties, and on which side, in the event of success, will lie the balance of inconvenience if the injunction is not issued.¹ Cotton, L. J. in *Prestin v. Luck*² observed that to entitle a plaintiff to an interlocutory injunction the Court should be satisfied that there is a serious question to be tried at the hearing and that on the facts before

1. 26 Mad. 168 ; 1 A. L. J. 527 ; A. I. R. 1920 Cal. 276,

2. (1884) 27 C. D. 497, 506.

it there is a possibility that the plaintiff is entitled to a relief. The real point upon an application for a temporary injunction, is not how the question ought to be decided at the hearing of the case, but whether matters should not be preserved in *status quo* until that question can be finally disposed of.

2. That the applicant has a *prima facie* case to go to trial, i.e., that there is a probability of the plaintiff getting the relief asked for by him. It is not necessary that he should prove his title to the property ; it is sufficient if he shows that he has a fair question to raise as to the existence of the right which he alleges and satisfies the Court that the property in dispute should be preserved in its present actual condition until such question can be disposed of.

3. That there is likelihood of the plaintiff suffering from an irreparable injury-an injury, which could not be adequately remedied by damages, if the injunction is not granted.

4. That the comparative mischief or inconvenience which is likely to issue from the withholding of such an injunction will be greater than that which is likely to arise from granting it.¹

To succint, before granting a temporary injunction, the Court must be satisfied that the plaintiff has a *prima facie* case ; that the Court's interference is necessary to protect him from irreparable or at least serious injury ; that the balance of convenience is in favour of the person who asks for the injunction ; and that there is no other sufficient or adequate remedy open to him by which to protect himself. Even if the plaintiff has a *prima facie* case, if it has not been shown that an irreparable loss would be caused and the plaintiff cannot be compensated in damages, no case is made out for the grant of a temporary injunction.²

In the present case there is a serious question to be tried and in case the defendant is not restrained from raising constructions on the land in dispute, the plaintiff will suffer an irreparable injury which cannot be compensated in terms of damages. Besides it is also necessary that the *status quo* should be maintained.

Having all the facts and circumstances of the case into consideration I am of the view that this is a fit case for the issue of a temporary injunction.

1. A. I. R. 1914 Cal. 362.

2. *Mooraj Mal v. The Administrator, Ajmer Municipal Committee*, 1953 A. M. L. J., 91,

Order

I, direct that the defendant be restrained from raising any further constructions on the land in dispute and *status quo* be maintained during the pendency of this suit.

Dated 10-10-63.

(Sd.) N. G. Goel
Munsif
Meerut

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PART III

CHAPTER I

CHARGE IN GENERAL

Charge defined — A charge may be defined as a written document containing the description of the offence which the Court, either in an inquiry or trial, finds *prima facie* proved by evidence before it to have been committed by the accused, so as to require him to defend himself.¹ In *Reily v. Emperor*² the term was defined as a “precise formulation of the specific accusation made against a person, who is entitled to know its nature at the very earliest opportunity”. The Code of Criminal Procedure defines charge as “Charge includes any head of charge when the charge contains more heads than one”.³ The Code, however, uses the term throughout as the statement of a specific offence and not as indicating the entire series of offences of which a prisoner is accused.⁴

Object of Charge.—Section 223 of the Code of Criminal Procedure lays down—

“When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused *sufficient notice of the matter with which he is charged* the charge shall also contain such particulars of the manner in which the alleged offence was committed ‘*as will be sufficient for that purpose*’”. Thus the object of the charge is to enable the accused to have a clear idea of what he is being tried for and of the essential facts he has

1. *Queen-Empress v. Appa Subhana Mendre*, I. L. R. 28 Cal. 434.

2. I. L. R. 28 Cal. 434. See also *Waroo v. Emperor*, 1948 Sind. 40.

3. Section 4 (1) (C).

4. *Queen-Empress v. Appa Subhana Mendre*, *supra*.

to meet.¹ Justice demands that an accused person should be apprised of the precise accusation against him, before he is called upon to enter on his defence.² The purpose of charge is to inform the accused in brief the matter with which he is charged and sections 221 to 224 of the Code of Criminal Procedure enshrine specific directions for that purpose. It has been repeatedly held that the framing of a proper charge is vital to a criminal trial and that this is a matter on which the Judge should bestow the most careful attention.³ The main idea behind the framing of a charge is to enable the defence to concentrate its attention on the case that he has to meet, and if the charge is framed in such a vague manner that the necessary ingredients of the offence with which the accused is convicted are not brought out on the charge then the charge is defective.⁴ An accused must be apprised with the greatest precision what acts he is said to have committed, and under what sections of the Penal Code these acts fall.⁵ A person charged with a criminal offence must be told with particularity not only the act he is alleged to have committed which is said to constitute it but also what is the law which he is said to have abridged.⁶ The Code of Criminal Procedure emphatically says that for every distinct offence of which a person is accused there shall be a separate charge and that it shall be formulated with precision and tried.⁷

In what cases charge be framed?—In warrant-cases if the Magistrate holds opinion that a *prima facie* case has been established, a charge must be framed.⁸ In summons cases no formal charge need be framed.⁹ But where a warrant case and summons-case are tried together at one trial, formal charges ought to be framed for both the offences.¹⁰

Language of the charge.—In the Presidency towns the charge should be written in English; elsewhere it should be written either in English or in the language of the Court.¹¹ Where considered necessary, the charge may be translated into the verna-

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1. *W. Slaney v. State of M. P.*, 1956 S. C. 116.
 2. *Indar Pal v. Emperor*, 1936 Lah. 409.
 3. *Krisnan v. State*, 1958 Kerala 94.
 4. *Makkhan v. Emperor*, 1945 All. 81.
 5. *Sheo Shankar v. King Emperor*, 1926 Oudh. 148.
 6. *S. K. Roy Chowdhury v. King*, 1941 Rang. 1.
 7. *Waroo v. Emperor*, 1948 Sindh. 40.
 8. Section 254, Cr. P. C.
 9. Section 242, Cr. P. C.
 10. Soni's Cr. P. C. 15th Edition, p. 1241.
 11. Section 221 (6) Cr. P. C.

cular. At any rate it should be explained to the accused in the language he understands.¹

Useless details must not be incorporated in a charge.—A charge should be free from unnecessary details. Details not essential to the offence should not be inserted in the charge, except such⁶ details of time and place as are sufficient to give the accused notice of the matter with which he is charged'. For example in a charge for murder, the weapon with which the murder was committed need not be given. Unnecessary insertions should be treated as surplusage.²

Essentials of a charge.—Sections 221 to 223 set out the essentials of a charge. As per these sections a charge must contain the following essentials :—

(1) **The offence with which the accused is charged.**—The charge should state the offence with which the accused is charged.³ If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.⁴ A charge which expressly gives the name of the offence given to it by law would be a complete and valid charge even if the essential ingredients of the offence are not alleged. But if the specific name is not given, the ingredients of the offence must be given in charge and they will not be implied under sub-section (5) of section 221.⁵ Thus, where a charge is framed under section 320, I. P. C. it is sufficient to allege that the accused caused grievous hurt, as the law has given specific name. By going through the charge, the accused will atonce come to know that he has to meet a case of grievous hurt caused in the different ways specified in section 320, I. P. C.

If the law which creates the offence does not give it any specific name, so much of the *definition of the offence* must be stated as will give the accused notice of the matter with which he is charged.⁶ Where the law which creates the offence does not give it any specific name, the definition of the offence must be stated. If the definition enshrines a particular knowledge or a particular intent as an essential ingredient of the offence, that knowledge or intent must be alleged in the charge.⁷

1. *Krishnan v. State*, 1958 Kerala 94.

2. *Francis v. Empress*, 4 Bom. H. C. R. 17.

3. Section 221 (1) Cr. P. C.

4. Section 221 (2) Cr. P. C.

5. *State v. Raghavan Pillai*, 1959 Kerala 248. Sub-Section (5) Section 221 reads : "The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case."

6. Section 221 (3), Cr. P. C.

7. *State v. Ram Singh*, 1957 Punj. 75, *Waroo v. Emperor*, 1948 Sind. 40.

(2) **The law and section of the law against which the offence is committed.**¹—A charge should contain the law and the section of the law under which the offence charged is punishable, though omission to comply with the requirement will not render the commitment illegal.² The accused must be apprised with particularity not only the act he is alleged to have committed which is said to constitute it but also what is the law which he is said to have infringed.³ Further, the charge should distinctly specify that part of the section which is applicable to the case.⁴ It is desirable that the language of the statute should be adhered to, as far as practicable, because it affords an opportunity to the accused to take exception to the form of the charge.⁵ Where several persons are accused of an offence committed in furtherance of a common intention, by the application of section 34, I. P. C., it is desirable that the same should be explicitly set out in the charge, though omission to refer to section 34 I. P. C. cannot affect the validity of the conviction, if the omission has not prejudiced the accused.⁶

(3) **Previous conviction where enhanced punishment is intended.**—If the accused having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction should be stated in the charge.⁷ It is pertinent to note that previous conviction is to be inserted only where the Court intends to punish the accused with the imprisonment exceeding the maximum punishment provided for the offence. Where previous conviction is intended to be inserted, the full facts, date and place thereof, should be given. A mere allegation that at the time when the prisoner committed the offence, he has been previously convicted of offences punishable under the Indian Penal Code,⁸ or that he "is an old offender" does not bring home to the accused person the particular offence or class of offences which renders him liable to a more severe sentence than the maximum provided for the offence. The prosecution

1. Section 221 (4), Cr. P. C.

2. In the matter of Sitaram Atmaram, 1 In. Jur. N. S. 23.

3. *S. K. Roy Chaudhury v. The King*, 1941 Rang. 1.

4. *Abaji Ramchandra*, (1890) 15 Bom. 189.

5. *Amrit Lal Hazara v. Emperor*, I. L. R. 42, Cal. 957.

6. *Nga Tha Htin v. Emperor*, A. I. R. 1935 Rang. 304 : 36 Cr. L. J. 1393.

7. Section 221 (7) Cr. P. C.

8. *Queen v. Sheikh Fakir*, 22 W. R. 39.

must prove the previous convictions and if they are not stated in the charge, they cannot be used for the purpose of enhancing the sentence.¹ Where the previous conviction is inserted in the charge, the accused should be called on to plead thereto; his mere admission that he had been in jail once is insufficient to show that he pleaded guilty to a previous conviction.² Where the previous convictions are denied, the prosecution is bound to prove that there were such convictions and that the accused was the person convicted.³

(4) Particulars as to time, place, person and circumstances of the offence.—The charge should contain such particulars as to the time and place of the alleged offence and the person (if any) against whom or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.⁴ A charge must contain such particulars as will give the accused an idea of the case which he has to meet at the trial. There should be not even an iota of doubt in the mind of the accused as to the case against him and as to the allegations which he has to answer. Sufficient particulars of time, place, person and circumstances as will give the accused notice of the matter with which he is charged must be stated in the charge.⁵ In a charge of attempt to cheat the name of the person cheated and the manner of cheating must be set out in the charge.⁶ A charge under section 406, I. P. C. in respect of "some deeds dated 21st June" was set aside when there were no documents bearing that date.⁷ Omission to give particulars in the charge is an irregularity curable under section 537 Cr. P. C. unless the irregularity has occasioned a failure of justice.⁸

But when the accused is charged with criminal breach of trust or dishonest misappropriation of money, it is sufficient to specify the *gross sum* in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, provided the time between the

1. *Rag v. Annoji Krishnoji*, *Ratanlal* 70. *Surendra Mohan Chuckerbutty v. Emperor*, 11 Cr. L. J. 217.

2. *Govind* (1902) 4 Bom. L. R. 177.

3. 2 Weir 266.

4. Section 222 (1), Cr. P. C.

5. *Queen Empress v. Fakirapa*, 1. L. R. 15 Bom. 491.

6. *Emperor on the prosecution of Hurjee Mull v. Imam Ali Sarcar*, 8 C. W. N. 278.

7. *Bipra Das Giri v. Nirdamoni Bewa*, 7 Cr. L. J. 372.

8. *Rajabuddin Mondal v. Emperor*, 1933 Cal. 676.

first and the last date does not exceed one year.¹ It is not necessary to insert in the charge the particular items or exact dates on which the offence was committed. It is not at all incumbent to specify the separate sums which have been embezzled.² It would suffice to say that some of the money mentioned in the charge has been misappropriated even though it may be indefinite what is the exact amount so misappropriated.³ In *Mohan Singh v. Emperor*,⁴ *Walsh, J.* observed that sec. 222 (2) of the Cr. P. C. was meant to provide for a case of an agent or subordinate whose duty it might be merely to receive sums of money from time to time and to account for them and was not suitable to the case of an agent whose employment involved the expenditure of money belonging to the principal as well as its receipts.⁵

(5) Manner of committing offence.—Where the nature of the case is such that the particulars mentioned before do not give the accused sufficient notice of the matter with which he is charged, the charge should also contain the manner in which the alleged offence was committed as will be sufficient for that purpose.⁶ The object of charge is to give the accused sufficient notice of the matter with which he is charged. For the purpose the law lays down that if the particulars as to the name, place and time of the commission of the offence in the charge do not give the accused sufficient notice of the matter with which he is charged, the charge should also set out the manner in which the offence charged was committed. *A* is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected because it has mentioned the name of the offence namely theft which impliedly gives notice to the accused that he has been charged with theft. Similarly, where, *A* is accused of the murder of *B* at a given time and place, the charge need not state the manner in which *A* murdered *B*. But where *A* is accused of cheating *B* at a given time and place, the charge must set out the manner in which *A* cheated *B*, because, the charge framed in the case does not give the accused sufficient notice of the matter with which he is charged. And similarly where *A* is accused of obstructing *B*, a public servant, in the discharge of his public functions at a given time and place, the charge must set out the manner in which *A* obstructed *B* in the discharge of his functions.

1. Sec. 222 (2) Cr. P. C.

2. Raman Behari Das, (1913) 41 Cal. 422.

3. Vinayak Bhatkhande, (1928) 30 Bom. L. R. 1530, 53 Bom, 119.

4. A. I. R. 1920, All. 274 : I. L. R. 42 All. 522.

5. *Emperor v. Ibrahim*, I. L. R. 33 All, 36.

6. Sec. 223, Cr. P. C.

Charge in particular cases

Cheating.—The manner of cheating should be inserted with precision. Where the accused is charged with cheating by obtaining goods by false representation it is not sufficient to set out the fact that the accused obtained the goods by dishonest means but the representation by which the complainant was induced to make over the goods should also be set out.¹ Where a charge under secs. 417 and 511 I. P. C. did not specify the person upon whom the alleged attempt to cheat was made and also the manner in which it was intended by the accused to influence the conduct of that person and these omissions were not remedied until the close of the prosecution, it was held that the charge was defective and section 255 Cr. P. C. did not cure the irregularity.²

Criminal Trespass.—It is sufficient to state that the accused person committed criminal trespass, on or about a particular day, at or about a particular time, by entering into or upon or by illegally remaining on the land (to be described) then in possession of a certain person (the name of the person to be stated). It is not at all necessary to give that the intimidation was made or annoyance was caused in a particular way.³

Defamation.—A charge for defamation should not merely set out the particular date but also set out the particular occasions on which the defamation was said to have been committed.⁴ The words alleged to be defamatory should be precisely set out, for it is the words so set out that constitute the foundation for defamation. It is incumbent that not only the words in question should be proved but also that the charge should set out the precise words complained of.⁵

Adultery.—In a charge for adultery, the date, time and place when the sexual intercourse took place should be given. But alleging commission of offence between two dates is legal where it is not possible in the circumstances of the case to assign particular dates on which sexual intercourse took place.⁶

Kidnapping.—In a charge for kidnapping it is not necessary to give in the charge when the taking started and when it was completed if it is clear from the evidence that there has been taking of the girl by the accused from the keeping of her guardian. There

1. *Kanwar Sain v. Emperor*, A. I. R. 1939 Lah. 95.

2. *Emperor v. Imam Ali Sarcar*, 8, C. W. N. 278.

3. *Khanmamad v. The State of Kutch*, 1953, Kutch 1.

4. *Bishwa Nath v. Keshav Gandhabania*, I. L. R. 30 Cal. 402.

5. *Sarat Chandra Das v. State*, 1952 Orissa 351.

6. *Bhola Nath Mitter v. The Emperor*, I. L. R. 51 Cal. 488.

is nothing wrong in such a charge specially when the charge has not prejudiced the accused.¹

Rioting and unlawful assembly.—In every charge of rioting and unlawful assembly, the common object must be inserted in the charge. A charge under section 144, I. P. C. must specify in addition to being a member of an unlawful assembly and armed with any deadly weapon, the common object of the assembly; failure to do so will render the conviction to be set aside.² In a charge for rioting under section 147 I. P. C. the Magistrate should specify the common object of the unlawful assembly; mere statement of the common object to commit rioting would not be sufficient. The Magistrate should give one of the objects as the common object as recited in section 141, I. P. C.³ A conviction of rioting on a charge which does not state the common object is liable to be set aside.⁴

Perjury.—A charge for perjury should set out a distinct assertion with regard to each statement intended to be characterised as perjury, that it was made, that it is untrue in fact and the accused knew it to be so when he made it.⁵ Further the charge should give the exact date on which the offence was committed,⁶ the Court or other officer before whom the offence was committed,⁷ the particular stage of the judicial proceeding when the offence was committed.⁸

Charge of public servant taking illegal gratification.—In a charge under section 161, I. P. C. the authority to be influenced need not be mentioned.⁹

Culpable homicide not amounting to murder.—When a charge under section 304 I. P. C. is divided into two distinct parts so much of the definition of the offence should be inserted as to give the accused clear notice of the exact matter with which he is charged.¹⁰

Sedition-section 124-A, I. P. C.—In a charge under section 124-A, I. P. C. for sedition the speeches or words alleged to be

1. *Biseswar v. The King*, 1949 Orissa 22.
2. *Markando v. Rorkonidi*, 1957 Cr. L. J. 146.
3. *Lakshmi Setti v. State*, 1957 Orissa, 190.
4. *Poresh Nath Sarcar v. Emperor*, I. L. R. 33 Cal. 295.
5. *Queen v. Kalichurun Lahooree*, 9. W. R. 54.
6. *The Queen v. Moharaj Misser*, 16 W. R. 47.
7. *Ibid.*
8. *In re Romon Audheekaree*, 10 W. R. 47.
9. *George Anthony Monterio v. The State*, 1955 Ajmer 18 (1).
10. *Ditto v. Emperor*, A. I. R. 1935 Sind. 23.

sedition, must be set out in the charge. It is however, not necessary to give the actual words ; it is sufficient to give such a description of the words used as is reasonably sufficient to enable the accused to know the matter with which he is charged. In *Mylapore Krishnasami v. Emperor*,¹ Wallis and Benson, JJ. observed that where the charge under section 124-A, I. P. C., is for exciting disaffection, the culpability consists in the disastrous consequences brought about by the words of the accused and the charge need not set out the words, nor need the words themselves be proved as the gist of the offence in that case would be exciting disaffection and not the uttering of seditious words, and the speaker may be guilty, even though his words may be innocent or uttered in a sense different from that in which they were understood by the audience. But in a charge for creating disaffection, the words used by the speaker must be set out because in that case the words written or spoken constitute the gist of the offence.

Effect of errors in charge.—No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded as material unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.² An error or omission is to be regarded as material only if (a) the accused was in fact misled by it and (b) it has occasioned a failure of justice.³ Where the accused is not misled by the error or omission, but fully understands the case brought against him and raises all possible defences in the trial, the error or omission cannot be said to be material.⁴ For example, A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact the murdered person's name was Haidar Baksh and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haider Baksh. The Court may infer from such facts that A was not misled and that the error in the case was not material.⁵ But, where A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on 21st January, 1882, when charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh and the witnesses present in his defence were witnesses in the case of Haidar Baksh,

1. I. L. R. 32 Mad. 384.

2. Section 225, Cr. P. C.

3. *Gian Singh v. Emperor*, 1938 Lah. 828.

4. *Damoderan v. State*, 1952 T. C. 11; *Mohammad Shafi v. Umar Din*, 1950 Pesh. 14.

5. Illustration (d) to section 225, Cr. P. C.

the Court may infer from this that *A* was misled and that the error was material.¹

Where the charge contains a material error the appellate Court or the High Court should direct a new trial to be had upon a charge in whatever manner it thinks fit.² But if the Court is of opinion that the facts of the case are such that no valid charge could be preferred in respect of the facts proved, it should quash the conviction.³ *A* is convicted of an offence, under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that *A* had such knowledge and that he was misled in his defence by the omission from the charge of the statement that he had it, it should direct a new trial upon an amended charge ; but if it appears probable from the proceedings that *A* had no such knowledge, it should quash the conviction.⁴

Commitment without a charge or imperfect charge.—

When any person is committed for trial without a charge or with an imperfect charge, the Court, or in the case of a High Court, the Clerk of the State, may frame a charge or add to or otherwise alter the charge as the case may be.⁵ *A* is charged with the murder of *B*. A charge of abetting the murder of *B* may be added or substituted. Similarly where *A* is charged with forging a valuable security under section 467 of the Indian Penal Code, a charge of fabricating false evidence under section 193 may be added.⁶ A case without a charge means not only a case in which there is no charge at all but also a case in which there is no charge in respect of such offence as the Sessions Judge or Clerk of the State may think the accused ought to be tried for.⁷

Alteration in charge.—An alteration in charge may be made by the Court at any time before judgment is pronounced and in the case of trial by jury before the Court of Sessions or High Court before the verdict of the jury is returned. Every such alteration made should be read and explained to the accused.⁸ If the alteration in the charge is such that proceeding immediately with the trial is not likely in the opinion of the Court, to prejudice the

1. Illustration (c) to section 225, Cr. P. C.

2. Sec. 232 (1), Cr. P. C.

3. *Ibid.*

4. Illustration to Sec. 232, Cr. P. C.

5. Sec. 226, Cr. P. C.

6. Illustrations (1) and (2) to Sec. 226, Cr. P. C.

7. *Vijram*, (1892) 16 Bom. 314.

8. Sec. 227, Cr. P. C.

accused in his defence or the prosecutor in the conduct of the case, the Court should proceed with the trial as if the altered charge had been the original charge.¹ If the alteration in the charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor, the Court should either direct a new trial or adjourn the trial for such period as may be necessary.² If the offence stated in the altered charge is one for the prosecution of which previous sanction is necessary, the case should not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered charge is founded.³ Whenever alteration in a charge is made after the commencement of the trial, the prosecutor and the accused should be allowed to re-call or re-summon and examine with reference to such alteration any witness who may have been examined and also to call any further witness whom the Court may think to be material.⁴

Withdrawal of charges on conviction.—When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal has the effect of an acquittal on such charge or charges unless the conviction is set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.⁵

It is pertinent to note that permission to withdraw one of the several charges against an accused person can be given only where the several charges against the accused have been framed in the same case and not where there are separate charges of distinct offences in different cases. Thus, where an accused person was tried by the Sessions Judge and was sentenced to three years' rigorous imprisonment under sections 380 and 75, I. P. C. and the Public Prosecutor with the consent of the Court withdrew another charge under sections 511 and 457, I. P. C., against the same accused in another case, the order was reversed.⁶ It is illegal for

1. Sec. 228, Cr. P. C.

2. Sec. 229, Cr. P. C.

3. Sec. 230, Cr. P. C.

4. Sec. 231, Cr. P. C.

5. Sec. 240, Cr. P. C.

6. *Queen-Empress v. Sadia, Ratan Lal*, 362.

a Court to stay the trial in a case pending appeal against the conviction in another case.¹

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CHAPTER II

JOINDER OF CHARGES

Separate charge for each distinct offence.—For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately.² The two general principles as to the joinder of charges are, firstly that for every distinct offence there shall be a separate charge and secondly that every such charge shall be tried separately. To illustrate, *A* is accused of a theft on one occasion and of causing grievous hurt on another occasion. *A* must be separately charged and separately tried for the theft and causing grievous hurt. *A* part from that there should be a separate charge for each distinct offence, and the trial of each of the charges should be separate. Separate offences should not be lumped together in one single charge,³ but each distinct offence should form a separate head of charge with reference to which there should be distinct finding and a distinct sentence.⁴ Offences are distinct if they fall under the different sections of the same penal enactment or under different enactments, or when they are committed on different occasions or against different persons even though they may fall under the same section.

Joinder of charges.—Joinder of charges is an exception to the above stated rules that for every distinct offence there should be a separate charge and that every such charge should be tried separately. Sections 234, 235, 236 and 239 of the Code of Criminal Procedure recite the cases in which the law sanctions the joinder of charges. It is pertinent to note that the matter of joinder of charges is a matter within the jurisdiction of the Court. This would be evident from the fact that the word “may” has been used in sections 234, 235, 236 and 239 which deal with the joinder of charges, while in section 233 which lays down the general principles that for every distinct offence there shall be a separate

1. *Kamaraju v. Emperor*, 9 Cr. L. J. 495.

2. Section 233, Cr. P. C.

3. *Becha Ram Mukerjee* (1944) 1 Cal. 398.

4. *The Queen v. Shao Churn*, 3 N. W. P. H. C. R. 314.

charge and that every such charge 'shall' be tried separately the word shall has been used. But the discretion has to be exercised judicially and not arbitrarily.

The cases in which the law permits the joinder of charges are :—

(1) *Three offences of the same kind committed within one year.*—When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for any number of them not exceeding three. Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law.¹ The section allows *three charges of three offences* of the same kind committed within one year to be tried together. Where the number of offences exceeds three the accused may separately be tried for them. The Privy Council has held that it is illegal under this section to charge a person at one trial with more than three acts, these acts extending over a period of more than a year. In the instant case the accused was tried on charges of extortion in which forty-one criminal acts extending over a period of two years were brought against him. *Held* that the trial so conducted was plainly prohibited and was illegal and could not be cured by section 537.²

*This section (234 Cr. P. C.) refers to the case of a single accused and is not applicable where several persons are tried jointly.*³ Further, this section does not deal with acts but it deals with offences, and the condition laid down by this section is that the accused must be charged with not more than three offences of the same kind. This section does not provide that the accused may be charged with having committed three acts or three series of acts of the same kind. This section requires actual compliance and not substantial compliance. It is not sufficient that the acts must be similar, but in order to bring a case within this section, the offences must be of the same kind as defined by clause (2) of this section.⁴ The clause (2) of this section says that offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law. Where one accused was charged at one trial with

1. Section 234, Cr. P. C.

2. Subramania Iyer, (1901) 28 I. A. 257, 3 Bom. L. R. 540, 25 Mad. 61.

3. Tulsi, 1916 P. R. No. 17 of 1917.

4. Chandra 1951 ; 53 Bom. L. R. 928 F. B.

criminal breach of trust with respect to seventeen sums of money, and also with falsifying account books of the Government, *held* that the trial involved misjoinder of charges as the two offences combined were not of the same kind.¹ Similarly, a trial of an accused person on three charges of breach of trust and three charges of falsification of accounts in connection therewith was held to be illegal.²

Another condition necessary to attract the application of the section is that, the three offences must have been committed in the course of one year. Where the accused was charged with having altered and mutilated certain accounts between the years 1907 and 1909, it was *held* that the charge was bad, inasmuch as he could have been tried at one trial only for three separate offences committed within the space of twelve months from first to last.³

It is not necessary that *the three offences of the same kind must have been committed against the same person*. An accused may be charged at one trial with three offences of the same kind even if committed against different persons. Where a postmaster was accused of having on three different occasions within a year, dishonestly misappropriated moneys paid to him by different persons for money orders, *held* that he could be charged with, and tried at one trial for all three offences.⁴ The Supreme Court has observed that a single act of firing a shot at two different persons is one offence and not two offences.⁵

(2) *Offences committed in one series of acts so connected together as to form the same transaction.*—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every distinct offence.⁶ *A* rescues *B*, a person in lawful custody, and in so doing causes grievous hurt to *C*, a constable in whose custody *B* was. *A* may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code and tried at the same time. Similarly, *A* commits house-breaking by day with intent to commit adultery, and commits in the house so entered adultery with *B*'s wife. *A* may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code and tried at the same time.

1. Manant K. Mehta, (1925) 27 Bom. I. L. R. 1343, 49 Bom. 892.

2. Mata Prasad, (1908) 30, All. 351.

3. Salim Ullah Khan, (1909) 32 All. 57.

4. Juala Prasad, (1884) 7 All. 174, F. B.

5. Bhagat Singh, (1952) S. C. R. 371.

6. Section 235 (1), Cr. P. C.

This section permits a number of offences even when exceeding three and extending over a period of more than twelve months, being tried at one trial if they are committed in one series of act so connected together as to form the same transaction.¹

The word *transaction* connotes a group of facts so connected together as to involve certain ideas, viz unity, continuity and connection. In order to determine whether a group of facts constitutes one transaction, it is necessary to ascertain whether they are so connected together as to constitute a whole which can properly be described as a transaction.² Whether a series of acts are so connected so as to form one transaction depends on whether they are so related to one another in point of purpose, or as cause and effect, or as principal and subsidiary acts as to constitute one continuous action. The fact that offences are committed at different times does not necessarily show that they may not be so connected as to form one transaction. Proximity of time, unity or proximity of place, continuity of action, community of purpose or design are elements for consideration, whether the alleged facts form the same transaction.³ The *Privy Council* has observed that identity of time is not an essential element in determining whether certain events form the same transaction. It is the continuity of action and the sameness of purpose that determine whether the events constitute the same transaction.⁴ If a man is found in concealed possession of a diamond necklace of which each individual diamond has been the subject of a separate theft and he knows that the diamonds have been stolen, his dishonest possession of necklace is one transaction.⁵ Similarly, the simultaneous possession of a number of bullocks at a fair and the offer of them for sale is one 'transaction' and any number of separately stolen bullocks may be the subject of a single trial.⁶

(3) Offence falling within two definitions.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.⁷ Several stolen sacks of coin are made over to A and B, who know they are stolen property, for the purpose of concealing them. A

1. Chorajudi Venkatadri, (1910) 33 Mad. 502.

2. Kashiram Jhunhunwalla, (1935) 62 Cal. 808.

3. Vijiram, (1892) 16 Bom. 414, 424 ; Kamla Kant Ray Chaudhry (1938) 2 Cal. 98 ; Nabijan, (1946) 25 Pat. 503.

4. Hirday, (1945) 24 Pat. 501.

5. Ramnath Rai, (1933) 13 Pat. 161.

6. *Ibid.* P. 164.

7. Section 235 (2), Cr. P. C.

and *B*, thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain pit. *A* and *B* may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code. Similarly where *A* exposes her child with the knowledge that she is thereby likely to cause its death and the child dies in consequence of such exposure, *A* may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code. And so where *A* dishonestly uses a forged document as genuine evidence, in order to convict *B*, a public servant, of an offence under section 197 of the Indian Penal Code, *A* may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

It may be pointed out that this sub-section covers the case where the particular acts constitute an offence falling within two or more separate definitions of any law by which offences are defined or furnished. It does not cover the case where different sets of acts constitute different offences.¹

(4) Acts constituting one offence, but constituting when combined a different offence.—If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, and for any offence constituted by any one, or more of such acts.² *A* commits robbery on *B* and in doing so voluntarily causes hurt to him. *A* may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code.

(5) Where it is doubtful what offence has been committed.—If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once ; or he may be charged in the alternative with having committed some one of the said offences.³ *A* is accused of an act which may amount to theft, or receiving stolen property or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating. Similarly where *A* states on oath before the Magistrate that he saw *B* hit *C* with a club and before the Sessions Court

1. *Becharam v. Emperor*, 1944 Cal. 224 at 228.

2. Section 235 (3), Cr. P. C.

3. Section 236, Cr. P. C.

states on oath that *B* never hit *C*, *A* may be charged in the alternative and convicted of intentionally giving false evidence although it cannot be proved which of these contradictory statements was false.

This section provides for cases where the Court entertains doubt what offence has been committed. It applies to cases in which the facts are not doubtful but the application of the law to the facts is doubted.¹ 'A Court trying a criminal case may convict of a crime not the subject of the charge provided (i) that the crime of which the accused is found guilty is established by evidence and (ii) that having regard to the information available by the prosecuting authorities, it is doubtful which of one or more offences would be established by the evidence at trial.' The application of this section is therefore, limited to those class of cases where it is doubtful which of several offences, the facts if proved, would constitute. Where there is no doubt about the offences which those facts would constitute this section does not apply.² If the facts are in doubt or if the ascertained facts are consistent with innocence, the section has no application.³ The *Supreme Court* has held that the provisions of section 236 can apply only in cases where there is no doubt about the facts which can be proved but a doubt arises as to which of several offences have been committed on the proved facts in which any number of charges can be proved.⁴

What persons may be charged jointly.—Section 239 of the Code of Criminal Procedure lays down which persons may be charged and tried together. This section is the last exception to section 233 which lays down the general rule that every offence must be charged and tried separately. 'This is the only section which sanctions a joint trial of several persons under circumstances specified in the section. Except in cases falling under this section, a joint trial of several accused persons renders the trial invalid' (Ratanlal). The following persons may be charged and tried together, namely:—

(a) *Persons accused of the same offence committed in the course of the same transaction.*⁵ Persons accused of the same offence committed in the course of the same transaction can be charged and tried together. The expression "the same offence" connotes the same physical act of crime. The test is whether the two persons are

1. Abdul Hamid, (1935) 14 Ran. 24 ; Eusaf Shaikh (1945) 1 Cal. 470.

2. *Bijo Gope v. Emperor*, 1945 Pat. 376 at 379.

3. Paul De Flooder, I. L. R. 59 Cal. 92.

4. *Nanak Chand v. State of Punjab*, 1955 S. C. 274 at 279.

5. Section 239 (a) Cr. P. C.

engaged in one transaction, and to determine that it is necessary to regard the facts from the point of view of those two persons. If they are animated by a common purpose, and there is continuity in their action, then surely there is one transaction so far as they are concerned. It may even be that community of purpose is not necessary.¹ The same offence means an offence arising out of the same act or series of acts.² Certain persons who were witnesses on the same side, gave false evidence on the same point to the same fact. *Held* that the evidence was given in the same transaction and that their joint trial for perjury was legal.³

(b) *Persons accused of an offence and persons accused of abetment or of an attempt to commit such offence.*⁴ A person accused of a substantive offence and a person accused of abetment of such offence can be charged and tried together. But abetment must have taken place within the jurisdiction of the Court trying the substantive offence.⁵ A Railway Ticket Collector handed over two used tickets to another person, instructing him to apply for a refund of fares covered by the same as unused tickets at the place of issue. The latter made the application. *Held* that the joint trial of the Ticket Collector on charges under sections 408, 420 and 109 and the other under sections 420 and 511 of the Indian Penal Code was legal.⁶

(c) *Persons accused of more than one offence of the same kind committed by them jointly within the period of twelve months.*⁷ Where several persons commit several offences of the same kind within a period of one year they can be charged and tried jointly. It is not required that all the offences must have been committed in the course of the same transaction. What is required is that they should have been committed jointly. Where they are independent of one another, the accused cannot be tried together.

(d) *Persons accused of different offences committed in the course of the same transaction.*⁸ Persons who have committed different offences in the course of the same transaction may be tried jointly.⁹ If the transaction is not the same, they cannot be tried jointly.

1. Per Crump J., in *Sejmal Punamchand*, (1926) 29 Bom. L. R., 170, 171, 51 Bom. 310.

2. *Amar Singh*, (1954) Pun. 344.

3. *Sejmal Punam Chand*, (1926) 29 Bom. L. R. 170, 51 Bom. 310.

4. Section 239 (b) Cr. P. C.

5. *Sachidanandam v. Gopala Ayyangar*, (1929) 52 Mad. 991.

6. *Kalidas Chukerbutty*, (1911) 38 Cal. 453.

7. Section 239 (c), Cr. P. C.

8. Section 239 (d), Cr. P. C.

9. *Deputy Legal Remembrancer v. Kailash Chandra Ghose*, (1914) 42 Cal. 760.

A person who acts as an agent to receive a bribe on behalf of another and the person who accepts it can be tried jointly, because it is the same transaction. The one obtains and the other receives.¹ Similarly the printer and the publisher of a seditious matter can be tried jointly, because they are concerned in the same transaction in regard to the publication of the matter.² But where five persons were charged with having committed the offence of rioting on December 5; four out of those persons, and one *F* were charged with having committed the offence of criminal trespass on December 9 and the two cases were tried together, it was held that the trial was illegal as the transaction in the course of which the two offences were committed was not the same transaction but two different transactions.³

(e) *Persons accused of theft, extortion or criminal misappropriation, and persons accused of receiving or retaining or assisting in the disposal or concealment of property obtained in the commission of these offences.* When one person is accused of an offence which includes theft, extortion, or criminal misappropriation, and another of receiving or retaining or disposing of the stolen property, they may be jointly tried.⁴ The thief and the receiver of the stolen property may be tried jointly.⁵ Dacoity and receiving property stolen in the commission of the dacoity may be tried together.⁶ Two bicycles were stolen from different places, and in each case one *D* an employee of *F* who kept a bicycle shop, was seen loitering in the neighbourhood about the time when the bicycles disappeared. Parts of each of the stolen bicycles were afterwards found—some in the shop of *F* and some in the house of *H*. Held that the joint trial of these three persons for offences under sections 379 and 411 of the Indian Penal Code was not illegal.⁷

(f) *Persons accused of offences under sections 411 and 414 of the Indian Penal Code.*⁸ Persons accused of offences under sections 411 and 414 of the Indian Penal Code or either of these sections in respect of stolen property the possession of which has been transferred by one offence may be charged and tried together.⁹ The expression “possession of which has been transferred by one offence”

1. Shrinivas, (1905) 7 Bom. L. R. 637.

2. Shantaram Mirajkar, (1927) 30 Bom. L. R. 320.

3. Chandi Singh, (1887) 14 Cal. 395.

4. Section 239 (e), Cr. P. C.

5. Bhim, (1916) 38 All. 311; Nawab, (1936) 18 Lah. 62.

6. Durga Prasad, (1922) 45 All. 223.

7. Anwar, (1921) 44 All. 276.

8. Section 239 (f), Cr. P. C.

9. Keshav Krishna, (1904) 6 Bom. L. R. 361.

refers to the original theft of the stolen property.¹ Where several articles stolen at one theft are received by different persons, all or any of the receivers are triable jointly for the offence of receiving stolen property.²

(g) *Persons accused of an offence under Chapter XII, Indian Penal Code, relating to counterfeit coin, and persons accused of any other offence relating to the same coin, or of abetment or attempt to commit such offence.* Persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin, and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence may be tried jointly.³

Misjoinder of Charges.—As hereinbefore seen section 233 of the Code of Criminal Procedure lays down that for every distinct offence there shall be a separate charge and sections 234 to 236 and 239 of the same Code enshrine the law relating to the joinder of charges *i. e.*, the charges that may be joined in one trial. The joinder of charges in violation of the provisions contained in these sections is misjoinder of charges. In *Thuller Singh v. Emperor*,⁴ the expression 'misjoinder of charges' has been defined as 'joinder of charges in contravention of the provisions of section 233 Cr. P. C. read with sections 234 to 236 and 239 Cr. P. C.'

Effect of misjoinder of charges.—Section 537 Cr. P. C. recites the effect of misjoinder of charges. The section lays down that "no finding, sentence or order passed by a competent Court be reversed or altered on appeal or revision on account of (a) any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceeding ;

(b) any error, omission or irregularity in the charge including the *misjoinder of charges*..... ,

unless such error, omission or irregularity has occasioned a failure of justice. In determining whether any error, omission or irregularity in any proceeding has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceeding (Explanation).

The question whether there has been a failure of justice is a question of fact.⁵

1. Lakha Amra, (1931) 34 Bom. L. R. 301.

2. Musammat Guljania, (1927) 6 Pat. 583.

3. Section 239 (g), Cr. P. C.

4. A. I. R. 1939 All. 665.

5. 1957 Cr. L. J. 1213.

Prior to 1955 it was held that the misjoinder of charges constituted illegality which vitiated the trial and which could not be cured under section 537, Cr. P. C. The section has been now amended by section 106 of the Code of Criminal Procedure Amendment Act of 1955 which has added a new clause (b) to the section. The amendment has been to the effect that the misjoinder of charges shall not vitiate the proceedings except where it has occasioned a failure of justice.

In *Ahmed Hussain v. State*¹ it has been held that in view of the amended section 537, misjoinder of accused in a trial is not an illegality but it is an irregularity curable under clause (b) of section 537.

In *Sheo Prasad v. State*² it was observed that under the amended Code of Criminal Procedure in view of the explanation added to section 537, the High Court has to take into consideration whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court has also to have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. In case the objection could or should have been taken at an earlier stage in the proceedings. In case the objection could or should have been taken at an earlier stage and was not taken, the High Court is reluctant to interfere in its revisional jurisdiction.

The final position of the law on the misjoinder of charges is that misjoinder of charges shall be no ground for setting aside or reversing any sentence or order unless it has occasioned a failure of justice.

— — —

1. 1958, A. L. J. 14.

2. 1959 A. L. J. 44.

CHAPTER III

FRAME OF CHARGE

A charge may be divided into four parts :—

Part I.—It consists of the name and office of the Magistrate framing the charge and the name of the accused charged. It is written in the following way—

“I, X, Magistrate Ist class, hereby charge you Y, as follows :—”

Part II.—It consists of the body of the charge. It consists of all those essentials which we have discussed earlier in Chapter I under the head charge in general. It also specifies the name of the Court which is to take cognizance of the offence.

Part III.—In this part the Magistrate directs the accused to be tried by the Court specified in the main body of the charge. The Magistrate directs in the following way :—

“And I hereby direct that you be tried by the said Court on the said charge.”

Part IV.—It consists of the Signature and seal of the Magistrate who has framed the charge.

SOME MODEL CHARGES

(I) Charges with one Head

(1) On Penal Code section 121.—I, M, Magistrate Ist Class, Meerut hereby charge you ‘N’ as follows :—

That you on or about the 10th day of December 1963 at 11. A. M. waged war against the Government of India and thereby committed an offence punishable under section 121 of the Indian Penal Code and within the cognizance of the Court of Session (When the charge is framed by a Presidency Magistrate for Court of Session *substitute* High Court).

And I hereby direct that you be tried by the said Court on the said charge.

(Sd.) ‘M’

Magistrate Ist Class Meerut.

(2) On Section 161, I. P. C.—I, X, Magistrate Ist Class Meerut, hereby charge you ‘Y’ as follows :—

That you being a public servant in the Co-operative Department, directly accepted from Ram Lal, for another party Shyam-Lal, a gratification other than legal remuneration, as a motive for

forbearing to do an official act and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session.

And I hereby direct that you be tried by the said Court on the same charge.

(Sd.) X,

Magistrate Ist Class Meerut.

(3) **On Section 166.**—I, X, Magistrate Ist Class, Saharanpur, hereby charge you 'Y' as follows :—

That you, on or about the _____ day of _____, at _____ did (or omitted to do *as the case may be*) _____, such conduct being contrary to the provisions of the Act _____, section _____, and known by you to be prejudicial to _____, and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session.

And I hereby direct that you be tried by the said Court on the same charge.

(Sd.) X,

Magistrate Ist Class Saharanpur.

(4) **On section 193.**—I, M, Magistrate Ist Class Kanpur, hereby charge you 'N' as follows--

That you on or about the 10th day of July, 1963, at Kanpur in the course of the trial of Civil Suit No. 205 of 1963, before the Civil Judge Kanpur stated in evidence that " _____ " which statement you either knew or belived to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code and within the cognizance of the Court of Session.

And, I hereby direct that you be tried by the said Court on the same charge.

'M'

Magistrate Ist Class Kanpur.

(5) **On section 302.**—I, (name and office of the Magistrate etc.), hereby charge you (name of the accused) as follows—

That you, on or about the 15th day of August, 1963, at 12 A. M. committed murder of X by intentionally causing the death of X and thereby committed an offence punishable under section 302 of the Indian Penal Code and within the cognizance of the Court of Session.

And, I hereby direct that you be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate).

(6) On section 304.—I, *(name and office of the Magistrate etc.)*, hereby you *(name of the accused)* as follows—

That you on or about the 25th day of April 1962 at 9 P. M. committed culpable homicide not amounting to murder, causing, the death of Raj Kumar, and thereby committed an offence punishable under section 304 of the Indian Penal Code and within the cognizance of the Court of Session.

And, I hereby direct you to be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate).

(7) On section 306.—I, *(name and office of the Magistrate etc.)*, hereby charge you *(name of the accused)* as follows—

That you, on or about the 11th day of January 1963, at 11 P. M. abetted the commission of suicide by A. B., a person in a state of intoxication and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session.

And, I hereby direct you to be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate).

(8) On section 325.—I, *(name and office of the Magistrate etc.)*, hereby charge you *(name of the accused)* as follows—

That you, on or about the 23rd day of September 1963, at 1 P. M. voluntarily caused grievous hurt to Shiv Nath, and thereby committed an offence punishable under section 325 of the Indian Penal Code and within the cognizance of the Court of Session.

And, I hereby direct you to be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate).

(9) On section 392.—I, *(name and office of the Magistrate etc.)*, hereby charge you *(name of the accused)* as follows—

That you, on or about the 30th day of December 1963, at 2 A. M. robbed *(state the name)*, and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session.

And I hereby direct you to be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate).

(10) On section 395.—I, (*name and office of the Magistrate etc.*), hereby charge you (*name of the accused*) as follows—

That you, on or about the 19th day of July 1963, at 12 P. M., committed dacoity, at the house of Chhotey Lal resident of 10, New Katra, Meerut an offence punishable under section 395 of the Indian Penal Code and within the cognizance of the Court of Session.

And, I hereby direct you to be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate).

(II) Charges with two or more heads

(1) On section 241.—I, (*name and office of Magistrate etc.*), hereby charge you (*name of the accused*) as follows—

First.—That you, on or about the 23rd day of November 1963, at 5 P. M., knowing a coin to be counterfeit, delivered the same to another person, by name A. B., as genuine, and thereby committed an offence, punishable under section 241 of the Indian Penal Code, and within the cognizance of Court of Session.

Secondly.—That you, on or about the 23rd day of November 1963, at 5 P. M. knowing a coin to be counterfeit, attempted to induce another person, by name A. B., to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session.

And, I hereby direct you to be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate)

(2) On sections 302 and 304.—I, (*name and office of Magistrate etc.*) hereby charge you (*name of the accused*) as follows—

First.—That you, on or about the 20th day of April 1963, at 3 P. M. committed murder by causing the death of Raghubir Singh and thereby committed an offence punishable under section 302 of the Indian Penal Code and within the cognizance of the Court of Session.

Secondly.—That you, on or about the 20th day of April 1963, at 3 P. M. by causing the death of Raghubir Singh, committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code and within the cognizance of the Court of Session.

And I hereby direct you to be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate).

(3) On sections 379 and 382.—I (*name and office of Magistrate etc.*), hereby charge you (*name of the accused*) as follows—

First.—That you, on or about the 16th day of March 1963, at 11 P. M., committed theft at the house of Chhotey Lal resident of 10, New Katra, Meerut and thereby committed an offence punishable under section 379 of the Indian Penal Code and within the cognizance the Court of Session.

Secondly.—That you, on or about the 16th day of March 1963, at 11 P. M., committed theft having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code and within the cognizance of the Court of Session.

Thirdly.—That you, on or about the 16th day of March 1963, at 11 P. M., committed theft having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session.

Fourthly.—That you, on or about the 16th day of March 1963, at 11 P. M., committed theft having made preparation for causing fear or hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code and within the cognizance of the Court of Session.

And I hereby direct you to be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate)

(4) Alternative charge on section 193.—I (*name and office of Magistrate etc.*), hereby charge you (*name of the accused*) as follows :—

That you on or about the 18th day of July 1963, at 11 A. M. in the course of inquiry into _____, before _____, stated in evidence that “ _____ ”, and that you on or about the 18th day of July 1963, at 11 A. M., in the course of trial of _____, before _____, stated in evidence that “ _____ ”, one of which statements you either knew or believed to be false, or did not believe to be true, and thereby

committed an offence punishable under section 193 of the Indian Penal Code and within the cognizance of the Court of Session.

And I hereby direct you to be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate)

III. Charge for theft after Previous Conviction.—
I (*name and office of Magistrate etc.*), hereby charge you (*name of the accused*) as follows :—

That you on or about the 15th day of May 1963, at 10 P. M., committed theft, at the house of Chhotey Lal resident of 10, New Katra, Meerut, and thereby committed an offence punishable under section 379 of the Indian Penal Code and within the cognizance of the Court of Session.

And you, the said (*name of the accused*), stand further charged that you, before the committing of the said offence, that is to say, on the 15th day of May, 1963, had been convicted by the (*state the Court by which the conviction was had*) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the accused was convicted*), which conviction is still in full force and effect, and that you are hereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct you to be tried by the said Court on the said charge.

(Signature and Seal of the Magistrate)

CHAPTER IV

TABLE

In charge the Magistrate has to specify the Court which is to try the offence charged. The below—given table shows what offences are to be tried by what Courts.

| Section of the Indian Penal Code | Offence. | By what Court triable |
|--|---|--|
| 109 | Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment. | The Court by which the offence abetted is triable. |
| 110 | Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor. | Ditto. |
| 111 | Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso. | Ditto. |
| 113 | Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor. | Ditto. |
| 114 | Abetment of any offence, if abettor is present when offence is committed. | Ditto. |
| 115 | Abetment of an offence, punishable with death or [imprisonment for life], if the offence be not committed in consequence of the abetment. | Ditto. |
| | If an act which causes harm be done in consequence of the abetment. | Ditto. |
| 116 | Abetment of any offence, punishable with imprisonment, if the | Ditto. |

| Section of the Indian Penal Code. | Offence. | By what Court triable |
|---|--|--|
| | offence be not committed in consequence of the abetment. | |
| | If the abettor or the person abetted be a public servant whose duty it is to prevent the offence. | The Court by which the offence abetted is triable. |
| 117 | Abetting the commission of an offence by the public or by more than 10 persons. | Ditto. |
| 118 | Concealing a design to commit an offence punishable with death or [imprisonment for life,] if the offence be committed. If the offence be not committed. | Ditto. |
| 119 | A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed. | Ditto. |
| | If the offence be punishable with death or [imprisonment for life]. | Ditto. |
| | If the offence be not committed. | Ditto. |
| 120 | Concealing a design to commit an offence punishable with imprison- ment, if the offence be committed. If the offence be not committed. | Ditto. |
| 120-B | Criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigo- rous imprisonment for a term of two years or upwards. | Court of Session when the offence which is the object of the conspiracy is triable exclu- sively by such Court; in the case of all other offences Court of Session, Presi- dency Magistrate or Magistrate of the first class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| | Any other criminal conspiracy. | Presidency Magistrate or Magistrate of the first-class. |
| 121 | Waging or attempting to wage war, or abetting the waging of war, against the [Government of India]. | Court of Session |
| 121-A | Conspiracy to commit certain offences against the State. | Ditto. |
| 122 | Collecting arms, etc., with the intention of waging war against the [Government of India]. | Ditto. |
| 123 | Concealing with intent to facilitate a design to wage war. | Ditto. |
| 124 | Assaulting President, Governor, etc, with intent to compel or restrain the exercise of any lawful power. | Ditto. |
| 124-A | Sedition. | Court of Session, Chief Presidency Magistrate or District Magistrate or Magistrate of the first class specially empowered by the State Government in that behalf. |
| 125 | Waging war against any Asiatic Power in alliance or at peace with the Government of India, or abetting the waging of such war. | Court of Session. |
| 126 | Committing depredation on the territories of any power in alliance or at peace with the Government of India. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|--|
| 127 | Receiving property taken by war or depredation mentioned in section 125 and 126. | Court of Session |
| 128 | Public servant voluntarily allowing prisoner of state or war in his custody to escape. | Court of Session. |
| 129 | Public servant negligently suffering prisoner of state or war in his custody to escape. | Court of Session, Presidency Magistrate of the first class. |
| 130 | Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner. | Court of Session. |
| 131 | Abetting mutiny or attempting to seduce an officer, soldier, sailor or airman from his allegiance or duty. | Court of Session. |
| 132 | Abetment of mutiny, if mutiny is committed in consequence thereof. | Ditto. |
| 133 | Abetment of an assault by an officer, soldier, sailor or airman on his superior officer, when in the execution of his office. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 134 | Abetment of such assault, if the assault is committed. | Court of Session. |
| 135 | Abetment of the desertion of an officer, soldier, sailor or airman. | Presidency Magistrate or Magistrate of the first or second class. |
| 136 | Harbouring such officer, soldier, sailor or airman who has deserted. | Ditto. |
| 137 | Deserter concealed on board merchant vessel, through negligence of master or person in charge thereof. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|----------------------------------|---|---|
| 138 | Abetment of act of insubordination by an officer, soldier, sailor or airman, the offence be committed in consequence. | Presidency Magistrate or Magistrate of the first or second class. |
| 140 | Wearing the dress or carrying any token used by a soldier, sailor or airman with intent that it may be belived that he is such a soldier, sailor or airman. | Any Magistrate. |
| 143 | Being member of an unlawful assembly. | Ditto. |
| 144 | Joining an unlawful assembly armed with any deedly weapon. | Any Magistrate. |
| 145 | Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse. | Ditto. |
| 147 | Rioting. | Ditto. |
| 148 | Rioting armed with a deadly weapon. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 149 | If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence. | The Court by which the offence is triable. |
| 150 | Hiring, engaging or employing persons to take part in an unlawful assembly. | Ditto. |
| 151 | Knowingly joining or continuing in any assembly of five or more persons, after it has been commanded to disperse. | Any Magistrate. |
| 152 | Assaulting or obstructing public servant when suppressing riot, etc. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| 153 | Want only giving provocation with intent to cause riot; if rioting be committed. If not committed. | Any Magistrate. |
| 153-A | Promoting enmity between classes. | Ditto. Presidency Magis- trate or Magis- trate of the first class. |
| 154 | Owner or occupier of land not giving information of riot, etc. | Presidency Magis- trate or Magis- trate of the first or second class. |
| 155 | Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it. | Ditto. |
| 156 | Agent of owner or occupier for whose benefit a riot is com- mitted not using all lawful means to prevent it. | Ditto. |
| 157 | Harbouring persons hired for an unlawful assembly. | Ditto. |
| 158 | Being hired to take part in an unlawful assembly or riot. | Presidency Magis- trate or Magis- trate of first or second class. |
| 160 | Committing affray | Any Magistrate. |
| 161 | Being or expecting to be a pub- lic servant, and taking a grati- fication other than legal remu- neration in respect of an official act. | Court of Session, Presidency Magis- trate or Magis- trate of the first class. |
| 162 | Taking a gratification in order, by corrupt or illegal means, to influence a public servant. | Ditto. |
| 163 | Taking a gratification for the exercise of personal influence with a public servant. | Presidency Magis- trate or Magis- trate of first class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| 164 | Abetment by public servant of the offences defined in the last two proceeding clauses with reference to himself. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 165 | Public servant obtaining any valuable thing without consideration from a person concerned in any proceeding or business transacted by such public servant. | Presidency Magistrate or Magistrate of the first or second class. |
| 166 | Public servant disobeying a direction of the law with intent to cause injury to any person. | Ditto. |
| 167 | Public servant framing an incorrect document with intent to cause injury. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 168 | Public servant unlawfully engaging in trade. | Presidency Magistrate or Magistrate of first class. |
| 169 | Public servant unlawfully buying or bidding for property. | Ditto. |
| 170 | Personating a public servant. | Any Magistrate. |
| 171 | Wearing garb or carrying token used by public servant with fraudulent intent. | Any Magistrate. |
| 171-E | Bribery | Presidency Magistrate or Magistrate of the first class. |
| 171-F | Undue influence at an election [Personation at an election] | Ditto. [Ditto.] |
| 171-G | False statement in connection with an election. | Ditto. |
| 171-I | Failure to keep election accounts. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|--|
| 172 | Absconding to avoid service of summons or other proceeding from a public servant. If summons or notice require attendance in person, etc. in a Court of Justice. | Any Magistrate Ditto. |
| 173 | Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation. If summons, etc., require atten- dance in person, etc., in Court of Justice. | Presidency Magis- trate or Magis- trate of the first or second class. Ditto. |
| 174 | Not obeying a legal order to attend at a certain place in person or by agent or depar- ting therefrom without autho- rity. If the order requires personal attendance, etc., in a Court of Justice. | Any Magistrate. Ditto. |
| 175 | Intentionally omitting to pro- duce a document to a public servant by a person legally bound to produce or deliver such document. If the document is required to be produced in or delivered to a Court of Justice. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV Cr. P. C., or, if not committed in a Court, a Presi- dency Magistrate or Magistrate of the first or second class. Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| 176 | Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information. | Presidency Magistrate or Magistrate of the first or second class. |
| | If the notice or information required respects the commission of an offence, etc. | Ditto. |
| | If the notice or information is required by an order passed under sub-section (1) of section 565 of the Cr. P. C. | Ditto. |
| 177 | Knowingly furnishing false information to a public servant. | Ditto. |
| | If the information required respects the commission of an offence etc. | Ditto. |
| 178 | Refusing oath when duly required to take oath by a public servant. | The Court in which the offence is committed, subject to the provisions of Chapter XXXV Cr. P. C. or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class. |
| 179 | Being legally bound to state truth, and refusing to answer questions. | Ditto. |
| 180 | Refusing to sign a statement made to a public servant when legally required to do so. | Ditto. |
| 181 | Knowingly stating to a public servant on oath as true that which is false. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|--|
| 182 | Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person. | Presidency Magistrate, or Magistrate of the first or second class. |
| 183 | Resistance to the taking of property by the lawful authority of a public servant. | Ditto. |
| 184 | Obstructing sale of property offered for sale by authority of a public servant. | Ditto. |
| 185 | Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorised sale or bidding without intending to perform the obligations incurred thereby. | Ditto. |
| 186 | Obstructing public servant in discharge of his public functions. | Ditto. |
| 187 | Omission to assist public servant, when bound by law to give such assistance. | Ditto. |
| 188 | Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, etc. | Presidency Magistrate or Magistrate of the first or second class. |
| 188 | Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed. | Ditto. |
| 189 | If such disobedience causes danger to human life, health or safety, etc. | Ditto. |
| 189 | Threatening a public servant with injury to him or one in whom he is interested, to induce him to do or forbear to do any official act. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|---|
| 190 | Threatening any person to induce him to refrain from making or legal application for protection from injury. | Presidency Magistrate or Magistrate of the first or second class. |
| 193 | Giving or fabricating false evidence in a judicial proceeding. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | Giving or fabricating false evidence in any other case. | Ditto. |
| 194 | Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence. | Court of Session. |
| | If innocent person be thereby convicted and executed. | Court of Session. |
| 195 | Giving or fabricating false evidence with intent to procure conviction of an offence punishable with imprisonment for life or with imprisonment for 7 years or upwards. | Ditto. |
| 196 | Using in a judicial proceeding evidence known to be false or fabricated. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 197 | Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence. | Ditto. |
| 198 | Using as a true certificate one known to be false in a material point. | Ditto. |
| 199 | False statement made in any declaration which is by law receivable as evidence. | Ditto. |
| 200 | Using as a true any such declaration known to be false. | Ditto. |

| Section of the Indian Penal Code. | Offence. | By what Court triable. |
|---|--|---|
| 201 | Causing disappearance of evidence of an offence committed, or giving false evidence touching it to screen the offender, if the capital offence. | Court of Session. |
| | If punishable with imprisonment for life or imprisonment for 10 years. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If punishable with less than 10 years' imprisonment. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 202 | Intentional omission to give information of an offence by a person legally bound to inform. | Presidency Magistrate or Magistrate of the first or second class. |
| 203 | Giving false information respecting an offence committed. | Ditto. |
| 204 | Secreting or destroying any document to prevent its production as evidence. | Presidency Magistrate or Magistrate of the first class. |
| 205 | False personation for the purpose of any act or proceeding in a suit or Criminal prosecution, or for becoming bail or security. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 206 | Fraudulent removal or concealment, etc., of property to prevent its seizure as a forfeiture, or its satisfaction of a fine under sentence or in execution of a decree. | Presidency Magistrate or Magistrate of the first or second class. |

| Section of the Indian Penal Code. | Offence. | By what Court triable. |
|---|--|---|
| 207 | Claiming property without right, or practising deception touching right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree. | Presidency Magistrate or Magistrate of the first or second class. |
| 208 | Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied. | Presidency Magistrate or Magistrate of the first class. |
| 209 | False claim in a Court of Justice. | Ditto. |
| 210 | Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied. | Ditto. |
| 211 | False charge of offence made with intent to injure. | Ditto. |
| | If offence charged be punishable with imprisonment for 7 years or upwards. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If offence charged be Capital or punishable with imprisonment for life. | Court of Session. |
| 212 | Harbouring an offence, if the offences be Capital. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If punishable with imprisonment for life or with imprisonment for 10 years. | Ditto. |
| | If punishable with imprisonment for 1 year and not for 10 years. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |

| Section of the Indian Penal Code. | Offence. | By what Court triable. |
|---|---|--|
| 213 | Taking gift etc. to screen an offender from punishment if the offence be capital. | Court of Session. |
| | If punishable with imprisonment for life or with imprisonment for 10 years. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If with imprisonment for less than 10 years. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 214 | Offering gift or restoration of property in consideration of screening offender, if the offence be Capital. | Court of Session. |
| | If punishable with imprisonment for life or with imprisonment for 10 years. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If with imprisonment for less than 10 years. | Presidency Magistrate, or Magistrate of the first class, or Court by which the offence is triable. |
| 215 | Taking gift to help to recover movable property of which a person has been deprived by an offence without causing apprehension of offender. | Presidency Magistrate or Magistrate of the first class. |
| 216 | Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If punishable with imprisonment for life or with imprisonment for 10 years. | Ditto. |

| Section of the Indian Penal Code. | Offence | By what Court triable |
|-----------------------------------|---|---|
| | If with imprisonment for 1 year, and not for 10 years. | Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable. |
| 216A | Harbouring robbers or dacoits. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 217 | Public servant disobeying a direction of law with intent to save person from punishments or property from forfeiture. | Presidency Magistrate, or Magistrate of the first or second class. |
| 218 | Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture. | Court of Session. |
| 219 | Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict, or decision which he knows to be contrary to law. | Ditto. |
| 220 | Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law. | Court of Session. |
| 221 | Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital. | Ditto. |
| | If punishable with imprisonment for life or imprisonment for 10 years. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| | In with imprisonment for less then 10 years. | Presidency Magis- trate or Magis- trate of the first or second class. |
| 222 | Intentional omission to appre- hend on the part of a public servant bound by law to appre- hend person under sentence of a Court of Justice if under sentence of death. | Court of Session |
| | If under sentence of imprison- ment for life, imprisonment for 10 years or upwards. | Ditto. |
| | If under sentence of insprison- ment for less than 10 years or lawfully committed to custody. | Court of Session, Presidency Magis- trate or Magis- trate of the first class. |
| 223 | Escape from confinement neglig- ently suffered by a public servant. | Presidency Magis- trate or Magis- trate of the first or second class. |
| 224 | Resistance or obstruction by a person to his lawful apprehen- sion. | Ditto. |
| 225 | Resistance or obstruction to the lawful apprehension of another person, rescuing him from lawful custody. | Ditto. |
| | If charged with an offence punishable with imprisonment for life or imprisonment for 10 years. | Court of Session, Presidency Magis- trate or Magis- trate of the first class. |
| | If charged with a capital offence. If the person is sentenced to imprisonment for life or impri- sonment for 10 years or upwards. | Court of Session. Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|----------------------------------|---|--|
| 225-A | <p>If under sentence of death.</p> <p>Omission to apprehend, or sufferance of escape on part of public servant, in cases not otherwise provided for—</p> <p>(a) In case of intentional omission or sufferance</p> | Court of Session. |
| | (b) In case of negligent omission or sufferance. | Presidence Magistrate or Magistrate of the first or second class. |
| 225-B | Resistance or obstruction to lawful apprehension or escape or rescue in cases not otherwise provided for. | Ditto. |
| 227 | Violation of condition of remission of punishment. | The Court by which the original offence was triable. |
| 228 | Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding. | The Court in which the offence is committed subject to the provisions of Chapter XXXV, Cr. P. C. |
| 229 | Personation of a juror or assessor. | Presidency Magistrate or Magistrate of the first class. |
| 231 | Counterfeiting, or performing any part of the process of counterfeiting coin. | Court of Session. |
| 232 | Counterfeiting, or performing any part of the process of counterfeiting Indian coin. | Ditto. |

| Section of the Indian Penal Code | Office | By what Court Triable |
|--|--|---|
| 233 | Making, buying or selling instrument for the purpose of counterfeiting coin. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 234 | Making, buying or selling instrument for the purpose of counterfeiting the Indian coin. | Court of Session. |
| 235 | Possession of instruments or material for the purpose of using the same for counterfeiting coin. If Indian coin. | Court of Session, Presidency Magistrate or Magistrate of the first class. Court of Session. |
| 236 | Abetting in India the counterfeiting out of India of coin. | Ditto. |
| 237 | Import or export of counterfeit coin, knowing the same to be counterfeit. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 238 | Import or export of counterfeits of Indian coin knowing the same to be counterfeit. | Court of Session. |
| 239. | Having any counterfeit coin known to be such when it come into possession and delivering, etc., the same to any person. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 240 | The same with respect to Indian coin. | Ditto. |
| 241 | Knowingly delivering to another any counterfeit coin as genuine which when first possessed, the deliverer did not know to counterfeit. | Presidency Magistrate or Magistrate of the first or second class. |
| 242 | Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 243 | Possession of Indian coin by a person who knew it to be counterfeit when he became possessed thereof. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|----------------------------------|---|---|
| 244 | Person employed in a mint causing coin to be of a different weight or composition from that fixed by law. | Court of Session. |
| 245 | Unlawfully taking from a mint any coining instrument. | Ditto. |
| 246 | Fraudulently diminishing the weight or altering the composition of any coin. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 247 | Fraudulently diminishing the weight or altering the composition of Indian Coin. | Ditto. |
| 248 | Altering appearance of any coin with intent that it shall pass as a coin of a different description. | Ditto. |
| 249 | Altering appearance of Indian coin with intent that it shall pass as a coin of a different description. | Ditto. |
| 150 | Delivery to another of coin possessed with the knowledge that it is altered. | Ditto. |
| 251 | Delivery of Indian coin possessed with the knowledge that it is altered. | Ditto. |
| 252 | Possession of altered coin by a person who knew it to be altered when he became possessed thereof. | Ditto. |
| 253 | Possession of Indian coin by a person who knew it to be altered when he became possessed thereof. | Ditto. |
| 254 | Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered. | Presidency Magistrate or Magistrate of the first or second class. |

| Section of the Indian Penal Code | Offence | By what Court Triable |
|--|--|---|
| 255 | Counterfeiting a Government stamp. | Court of Session. |
| 256 | Having possession of an instrument or material for the purpose of counterfeiting a Government stamp. | Ditto. |
| 257 | Making, buying or selling instrument for the purpose of counterfeiting a Government stamp. | Ditto. |
| 258 | Sale of counterfeit Government stamp. | Court of Session. |
| 259 | Having possession of a counterfeit Government stamp. | Court of Session, Presidency Magistrate or Magistrate of first class. |
| 260 | Using as genuine a Government stamp known to be counterfeit. | Ditto. |
| 261 | Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government. | Ditto. |
| 262 | Using a Government stamp known to have been before used. | Presidency Magistrate or Magistrate of the first class. |
| 263 | Erasure of mark denoting that stamp has been used. | Court of Session, Presidency Magistrate, or Magistrate of first class. |
| 263-A | Fictitious stamps. | Presidency Magistrate or Magistrate of the first class. |
| 264 | Fraudulent use of false instrument for weighing. | Presidency Magistrate or Magistrate of the first or second class. |

| Section of the Indian Penal Code | Offence | By what Court Triable |
|--|--|---|
| 265 | Fraudulent use of false weight or measure. | Presidency Magistrate or Magistrate of the first or second class. |
| 266 | Being in possession of false weights or measures for fraudulent use. | Ditto. |
| 267 | Making or selling false weights or measures for fraudulent use. | Ditto. |
| 269 | Negligently doing any act known to be likely to spread infection of any disease dangerous to life. | Ditto. |
| 270 | Malignantly doing any act known to be likely to spread infection of any disease dangerous to life. | Ditto. |
| 271 | Knowingly disobeying any quarantine rule. | Ditto. |
| 272 | Adulterating food or drink intended for sale, so as to make the same noxious. | Ditto. |
| 273 | Selling any food or drink as food and drink, knowing the same to be noxious. | Ditto. |
| 274 | Adulterating any drug or medical <i>preparation</i> intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious. | Ditto. |
| 275 | Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated. | Ditto. |
| 276 | Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| 277 | Defiling the water of a public spring or reservoir. | Any Magistrate. |
| 278 | Making atmosphere noxious to health. | Ditto. |
| 279 | Driving or riding on a public way so rashly or negligently as to endanger human life, etc. | Ditto. |
| 280 | Navigating any vessel so rashly or negligently as to endanger human life, etc. | Presidency Magistrate or Magistrate of the first or second class. |
| 281 | Exhibition of a false light, mark or buoy. | Court of Session. |
| 282 | Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life. | Presidency Magistrate or Magistrate of the first or second class. |
| 283 | Causing danger, obstruction or injury in any public way or line of navigation. | Ditto. |
| 284 | Dealing with any poisonous substance, so as to endanger human life, etc. | Ditto. |
| 285 | Dealing with fire or any combustible matter so as to endanger human life, etc. | Any Magistrate. |
| 286 | So dealing with any explosive substance. | Ditto. |
| 287 | So dealing with any machinery. | Presidency Magistrate or Magistrate of the first or second class. |
| 288 | A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| 289 | A person omitting to take order with any animal in his possession, <i>so as</i> to guard against danger to human life, or of grievous hurt from such animal. | Any Magistrate. |
| 290 | Committing a public nuisance. | Ditto. |
| 291 | Continuance of nuisance after injunction to discontinue. | Presidency Magistrate, Magistrate of the first or second class. |
| 292 | Sale etc., of obscene books etc. | Presidency Magistrate or Magistrate of the first class. |
| 293 | Sale etc., of obscene objects to young persons. | Presidency Magistrate or Magistrate of the first class. |
| 294 | Obscene songs. | Any Magistrate. |
| 294-A | Keeping a lottery office. | Ditto. |
| | Publishing proposals relating to lotteries. | Ditto. |
| 295 | Destroying, damaging or defiling a place of worship or sacred object with intent to insult the religion of any class of persons. | Presidency Magistrate or Magistrate of the first or second class. |
| 295-A | Maliciously insulting the religion or the religious beliefs of any class. | Court of Session or Presidency Magistrate. |
| 296 | Causing a disturbance to an assembly engaged in religious worship. | Presidency Magistrate or Magistrate of the first or second class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| 297 | Trespassing in place of worship or sepulture, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse. | Presidency Magistrate or Magistrate of the first or second class. |
| 298 | Uttering any word or making any sound in the hearing, or making any gesture or placing any object in the sight, of any person, with intention to wound his feelings. | Ditto. |
| 302 | Murder | Court of Session. |
| 303 | Murder by a person under sentence of imprisonment for life. | Ditto. |
| 304 | Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, etc. | Ditto. |
| | If act is done with knowledge that it is likely to cause death, but without any intention to cause death, etc. | Ditto. |
| 304-A | Causing death by rash or negligent act. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 305 | Abetment of suicide committed by a child or insane or delirious person or an idiot, or a person intoxicated. | Court of Session. |
| 306 | Abetting the commission of suicide. | Court of Session. |
| 307 | Attempt to murder. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|---|
| | If such act cause hurt to any person. | Court of Session. |
| | Attempt, by life-convict to murder, if hurt is caused. | Ditto. |
| 308 | Attempt to commit culpable homicide. | Ditto. |
| | If such act cause hurt to any person. | Ditto. |
| 309 | Attempt to commit suicide. | Presidency Magistrate or Magistrate of the first or second class. |
| 311 | Being a thug | Court of Session. |
| 312 | Causing miscarriage. | Ditto. |
| | If the woman be quick with child. | Ditto. |
| 313 | Causing miscarriage without woman's consent. | Ditto. |
| 314 | Death caused by an act done with intent to cause miscarriage. | Ditto. |
| | If act done without woman's consent. | Ditto. |
| 315 | Act done with intent to prevent a child being born alive, or to cause it to die after its birth. | Ditto. |
| 316 | Causing death of a quick unborn child by an act amounting to culpable homicide. | Ditto. |
| 317 | Exposure of a child under 12 years of age by parent or person having care of it with intention of wholly abandoning it. | The Court of Session, Presidency Magistrate or Magistrate of the first class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|---|
| 318 | Concealment of birth by secret disposal of dead body. | Court of Session, Presidency Magis- trate or Magis- trate of the first class. |
| 323 | Voluntarily causing hurt. | Any Magistrate. |
| 324 | Voluntarily causing hurt by dangerous weapons or means. | Court of Session, Presidency Magis- trate or Magis- trate of the first or second class. |
| 325 | Voluntarily causing grievous hurt. | Ditto. |
| 326 | Voluntarily causing grievous hurt by dangerous weapons or means. | Court of Session, Presidency Magis- trate or Magis- trate of the first class. |
| 327 | Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence. | Ditto. |
| 328 | Administering, stupefying drug with intent to cause hurt, etc. | Court of Session. |
| 329 | Voluntarily causing grievous hurt to extort property or a valuable security or to constrain to do anything which is illegal or which may facilitate the commission of an offence. | Ditto. |
| 330 | Voluntarily causing hurt to extort confession, or information, or to compel to extortion of property, etc. | Ditto. |
| 331 | Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, etc. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| 332 | Voluntarily causing hurt to deter public servant from his duty. | Court of Session, Presidency Magis- trate or Magis- trate of the first class. |
| 333 | Voluntarily causing grievous hurt to deter public servant from his duty. | Court of Session. |
| 334 | Voluntarily causing hurt on grave and sudden provocation not intending to hurt any other than the person who gave the provocation. | Any Magistrate. |
| 335 | Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation. | Court of Session, Presidency Magis- trate or Magis- trate of the first or second class. |
| 336 | Doing any act which endangers human life or the personal safety of others. | Any Magistrate. |
| 337 | Causing hurt by an act which endangers human life, etc. | Presidency Magis- trate or Magis- trate of the first or second class. |
| 338 | Causing grievous hurt by an act which endangers human life, etc. | Ditto. |
| 341 | Wrongfully restraining any person. | Any Magistrate. |
| 342 | Wrongfully confining any person. | Presidency Magis- trate or Magis- trate of the first or second class. |
| 343 | Wrongfully confining for 3 or more days. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|--|
| 344 | Wrongfully confining for 10 or more days. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 345 | Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation. | Ditto. |
| 346 | Wrongful confinement in secret. | Ditto. |
| 347 | Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, etc. | Ditto. |
| 348 | Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, etc. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 352 | Assault or use of criminal force otherwise than on grave provocation. | Any Magistrate. |
| 353 | Assault or use of criminal force to deter a public servant from discharge of his duty. | Presidency Magistrate or Magistrate of the first or second class. |
| 354 | Assault or use of criminal force to a woman with intent to outrage her modesty. | Ditto. |
| 355 | Assault or criminal force with intent to dishonour a person otherwise than on grave and sudden provocation. | Ditto. |
| 356 | Assault or criminal force in attempt to commit theft of property worn or carried by a person. | Any Magistrate. |
| 357 | Assault or use of criminal force in attempt wrongfully to confine a person. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|--|
| 358 | Assault or use of criminal force on grave and sudden provocation. | Any Magistrate. |
| 363 | Kidnapping. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 363-A | Kidnapping, or obtaining the custody of, a minor, in order that such minor may be employed or used for purposes of begging. | Ditto. |
| | Maiming a minor in order that such minor may be employed or used for the purposes of begging. | Court of Session. |
| 364 | Kidnapping or abducting in order to murder. | Ditto. |
| 365 | Kidnapping or abducting with intent secretly and wrongfully to confine a person. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 366 | Kidnapping or abducting a woman to compel her marriage or to cause her defilement, etc. | Court of Session. |
| 366-A | Procuration of minor girl. | Ditto. |
| 366-B | Importation of girl from foreign country. | Ditto. |
| 367 | Kidnapping or abducting in order to subject a person to grievous hurt, slavery etc. | Ditto. |
| 368 | Concealing or keeping in confinement a kidnapped person. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| 369 | Kidnapping or abducting a child with intent to take property from the person of such child. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 370 | Buying or disposing of any person as a slave. | Court of Session. |
| 371 | Habitual dealing in slaves. | Ditto. |
| 372 | Selling or letting to hire a minor for purposes of prostitution, etc. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 373 | Buying or obtaining possession of a minor for the same purposes. | Ditto. |
| 374 | Unlawful compulsory labour. | Any Magistrate. |
| 376 | Rape— If the sexual intercourse was by a man with his own wife not being under 12 years of age. | Court of Session, Chief Presidency Magistrate or District Magistrate. |
| | If the sexual intercourse was by a man with his own wife not being under 12 years of age. | Court of Session. |
| | In any other case. | Ditto. |
| 377 | Unnatural offences. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 379 | Theft. | Any Magistrate. |
| 380 | Theft in a building, tent or vessel. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court Triable |
|----------------------------------|--|---|
| 381 | Theft by clerk or servant of property in possession of master or employer. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 382 | Theft, preparation having been made for causing death, or hurt, or restraint or fear of death, or of hurt, or of restraint, in order to the committing of such theft, or to retiring officer after committing it or to retaining property taken by it. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 384 | Extortion. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 385 | Putting or attempting to put in fear of injury, in order to commit extortion. | Ditto. |
| 386 | Extortion by putting a person in fear of death or grievous hurt. | Court of Session. |
| 387 | Putting or attempting to put a person in fear of death or grievous hurt in order to commit extortion. | Ditto. |
| 388 | Extortion by threat of accusation of an offence punishable with death, imprisonment for life or imprisonment for 10 years. | Ditto. |
| | If the offence threatened be an unnatural offence. | Ditto. |
| 389 | Putting a person in fear of accusation of offence punishable with death, imprisonment for life or with imprisonment for 10 years, in order to commit extortion. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|--|
| | If the offence be an unnatural offence. | Court of Session. |
| 392 | Robbery. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If committed on the highway between sunset and sunrise. | Ditto. |
| 393 | Attempt to commit robbery. | Ditto. |
| 394 | Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery. | Ditto. |
| 395 | Dacoity. | Court of Session. |
| 396 | Murder in dacoity. | Ditto. |
| 397 | Robbery or dacoity, with attempt to cause death or grievous hurt. | Ditto. |
| 398 | Attempt to commit robbery or dacoity when armed with deadly weapons. | Ditto. |
| 399 | Making preparation to commit dacoity. | Ditto. |
| 400 | Belonging to a gang of persons associated for the purpose of habitually committing dacoity. | Ditto. |
| 401 | Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 402 | Being one of five or more persons assembled for the purpose of committing dacoity. | Court of Session. |
| 403 | Dishonest misappropriation of movable property, or converting it to one's own use. | Any Magistrate. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|---|
| 404 | Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 406 | Criminal breach of trust. | Ditto. |
| 407 | Criminal breach of trust by a carrier wharfinger, etc. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 408 | Criminal breach of trust by a clerk or servant. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 409 | Criminal breach of trust by public servant, or by banker, merchant or agent, etc. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 411 | Dishonestly receiving stolen property, knowing it to be stolen. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 412 | Dishonestly receiving stolen property, knowing that it was obtained by dacoity. | Court of Session. |
| 413 | Habitually dealing in stolen property. | Ditto. |
| 414 | Assisting in concealment or disposal of stolen property, knowing it to be stolen property. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|---|
| 417 | Cheating. | Presidency Magistrate or Magistrate of the first or second class. |
| 418 | Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 419 | Cheating by personation. | Ditto. |
| 420 | Cheating and thereby dishonestly inducing delivery of property, or the making alteration or destruction of a valuable security. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 421 | Fraudulent removal or concealment of property, etc., to prevent distribution among creditors. | Presidency Magistrate or Magistrate of the first or second class. |
| 422 | Fraudulently preventing from being made available for his creditors a debt or demand due to offender. | Ditto. |
| 423 | Fraudulent execution of deed of transfer containing a false statement of consideration. | Ditto. |
| 424 | Fraudulent removal or concealment of property, of himself, or any other person or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled. | Ditto. |
| 426 | Mischief. | Any Magistrate. |
| 427 | Mischief, and thereby causing damage to the amount of 50 rupees or upwards. | Presidency Magistrate or Magistrate of the first or second class. |
| 428 | Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|----------------------------------|--|---|
| 429 | Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, etc., whatever may be its value or any other animal of the value of 50 rupees or upwards. | Court of Session, Presidency Magistrate of Magistrate of the first or second class. |
| 430 | Mischief by causing diminution of supply of water for agricultural purposes, etc. | Ditto. |
| 431 | Mischief by injury to public road, bridge, navigable river or navigable channel and rendering it impassable or less safe for travelling or conveying property. | Ditto. |
| 432 | Mischief by causing inundation or obstruction to public drainage, attended with damage. | Ditto. |
| 433 | Mischief by destroying or moving or rendering less useful a light-house or sea-mark, or by exhibiting false lights. | Court of Session. |
| 434 | Mischief by destroying or moving, etc., land-mark fixed by public authority. | Presidency Magistrate or Magistrate of the first or second class. |
| 435 | Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 436 | Mischief by fire or explosive substance with intent to destroy, a house, etc. | Court of Session. |
| 437 | Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|--|
| 438 | The mischief described in the last section when committed by fire or any explosive substance. | Court of Session. |
| 439 | Running vessel ashore with intent to commit theft etc. | Ditto. |
| 440 | Mischief committed after preparation made for causing death, or hurt, etc. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 447 | Criminal trespass. | Any Magistrate. |
| 448 | House-trespass. | Ditto. |
| 449 | House-trespass in order to the commission of an offence punishable with death. | Court of Session. |
| 450 | House-trespass in order to the commission of an offence punishable with imprisonment for life. | Court of Session. |
| 451 | House-trespass in order to the commission of an offence punishable with imprisonment. | Any Magistrate. |
| | If the offence is that. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 452 | House-trespass, having made preparation for causing hurt, assault, etc. | Ditto. |
| 453 | Lurking house-trespass or house-breaking. | Presidency Magistrate or Magistrate of the first or second class. |
| 454 | Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| | If the offence is theft. | Ditto. |

| Section of the Indian Penal Code | Offence. | By what Court triable |
|----------------------------------|--|---|
| 455 | Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, etc. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 456 | Lurking house-trespass or house-breaking by night. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 457 | Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment. If the offence is theft. | Ditto. |
| 458 | Lurking house-trespass or house-breaking by night, after preparation made for causing hurt etc. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 459 | Grievous hurt caused whilst committing lurking house-trespass or house-breaking. | Court of Session. |
| 460 | Death or grievous hurt caused by one or several persons jointly concerned in house-breaking by night, etc. | Ditto. |
| 461 | Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property. | Presidency Magistrate or Magistrate of the first or second class. |
| 462 | Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 465 | Forgery. | Court of Session, Presidency Magistrate or Magistrate of the first class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|--|
| 466 | Forgery of a record of a Court of Justice or of a Register of Births, etc., kept by a public servant. | Court of Session. |
| 467 | Forgery of a valuable security, will or authority to make or transfer any valuable security, or to receive any money etc. When the valuable security is a promissory note of the Central Government. | Ditto. Ditto. |
| 468 | Forgery for the purpose of cheating. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 469 | Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose. | Ditto. |
| 471 | Using as genuine a forged document which is known to be forged. When the forged document is a promissory note of the Central Government. | Same Court as that by which forgery is triable. Court of Session. |
| 472 | Making or counterfeiting a seal, plate etc. with intent to commit a forgery, punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seals plate, etc., knowing the same to be counterfeit. | Ditto. |
| 473 | Making or counterfeiting a seal, plate, etc., with intention to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, | Court of Session. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|----------------------------------|---|---|
| | or possessing with like intent any such seal, plate, etc., knowing the same to be counterfeit. | |
| 474 | Having possession of a document knowing it to be forged, with intent to use it as genuine ; if the document is one of the descriptions mentioned to section 466 of the Indian Penal Code. | Court of Session. |
| | If the document is one of the descriptions mentioned in section 467 of the Indian Penal Code. | Ditto. |
| | Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material. | Ditto. |
| 476 | Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material. | Ditto. |
| 477 | Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, etc. | Ditto. |
| 477A | Falsification of accounts. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 482 | Using false property mark with intent to deceive or injure any person. | Presidency Magistrate or Magistrate of the first or second class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|---|---|
| 483 | Counterfeiting a property mark used by another, with intent to cause damage or injury. | Presidency Magistrate or Magistrate of the first or second class. |
| 484 | Counterfeiting a property mark used by a public servant, or any mark used by him to denote the manufacture, quality, etc., of any property. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 485 | Fraudulently making or having possession of any die, plate or other instrument counterfeiting any public or private property mark. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 486 | Knowingly selling goods marked with a counterfeit property mark. | Presidency Magistrate or Magistrate of the first or second class. |
| 487 | Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, etc. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| 488 | Making use of any such false mark. | Ditto. |
| 489 | Removing, destroying or defacing any property mark with intent to cause injury. | Presidency Magistrate or Magistrate of the first or second class. |
| 489A | Counterfeiting currency-notes or bank-notes. | Court of Session. |
| 489B | Using as genuine forged or counterfeit currency-notes or bank-notes. | Ditto. |
| 489C | Possession of forged or counterfeit currency-notes or bank-notes. | Ditto. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|----------------------------------|---|---|
| 489D | Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes. | Court of Session. |
| 491 | Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so. | Presidency Magistrate or Magistrate of the first or second class. |
| 493 | A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him and to cohabit with him in that belief. | Court of Session. |
| 494 | Marrying again during the life time of a husband or wife. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 495 | Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted. | Court of Session. |
| 496 | A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married. | Ditto. |
| 497 | Adultery. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 498 | Enticing or taking away or detaining with a criminal intent a married woman. | Presidency Magistrate or Magistrate of the first or second class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|--|--|---|
| 500 | (a) Defamation (other than defa- mation by spoken words) against the President or the Vice President or the Governor of a State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State in res- pect of his conduct in the dis- charge of his public functions, when instituted upon a com- plaint made by the public pro- secutor. | Court of Session. |
| | (b) Defamation in any other case. | Court of Session, Presidency Ma- gistrate or Magis- trate of the first class. |
| 501 | (a) Printing or engraving mat- ter knowing it to be defamatory against the President, the Vice- President or the Governor of a State or a Minister or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public func- tions, when instituted upon a complaint made by the public prosecutor. | Court of Session. |
| | (b) Printing or engraving matter knowing it to be defamatory, in any other case. | Court of Session, Presidency Magis- trate or Magis- trate of the first class. |
| 502 | (a) Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter against the Presi- dent or the Vice-President or the | Court of Session. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|----------------------------------|--|---|
| | Governor of a State or a Minister or any other public servant employed in connection with the affairs of the Union, of a State in respect of his conduct in the discharge of his public functions, when instituted upon a complaint made by the public prosecutor. | |
| | (b) Sale of printed or engraved substance containing defamatory matter knowing it to contain such matter, in any other case. | Court of Session Presidency Magistrate or Magistrate of the first class. |
| 504 | Insult intended to provoke a breach of the peace. | Any Magistrate. |
| 505 | False statement, rumour etc. circulated with intent to cause mutiny or offence against the public peace. | Presidency Magistrate or Magistrate of the first class. |
| 506 | Criminal intimidation. | Presidency Magistrate or Magistrate of the first or second class. |
| | If threat to be cause death or grievous hurt etc. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| 507 | Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes. | Ditto. |
| 508 | Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure. | Presidency Magistrate or Magistrate of the first or second class. |
| 509 | Uttering any word or making any gesture intended to insult the modesty of a woman, etc. | Presidency Magistrate or Magistrate of the first class. |

| Section of the Indian Penal Code | Offence | By what Court triable |
|----------------------------------|--|---|
| 510 | Appearing in a public place etc. in a state of intoxication, and causing annoyance to any person. | Any Magistrate. |
| 511 | Attempting to commit offences punishable with imprisonment for life, or imprisonment, and in such attempt doing any act towards the commission of the offence. | The Court which the offence attempted is triable. |
| | If punishable with death, imprisonment for life, or imprisonment for 7 years or upwards. | Court of Session. |
| | If punishable with imprisonment for 3 years and upwards but less than 7 years. | Court of Session, Presidency Magistrate or Magistrate of the first class. |
| | If punishable with imprisonment for 1 year and upwards, but less than 3 years. | Court of Session, Presidency Magistrate or Magistrate of the first or second class. |
| | If punishable with imprisonment for less than 1 year, or with fine only. | Any Magistrate. |

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